

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION

Public Meeting

January 28, 2000
State Capitol, Room 4203
Sacramento, California

P A R T I C I P A N T S

--o0o--

Industrial Welfare Commission

CHUCK CENTER, Chair

DOUG BOSCO

BARRY BROAD

LESLEE COLEMAN

BILL DOMBROWSKI

Staff

ANDREW R. BARON, Executive Officer

MARGUERITE C. STRICKLIN, Legal Counsel

MICHAEL MORENO, Principal Analyst

CHRISTINE MORSE, Analyst

DONNA SCOTTI, Administrative Analyst

LISA CHIN, Analyst

I N D E X

--o0o--

	<u>Page</u>
Proceedings	7
<u>Public Testimony - Advanced Practice Nursing:</u>	
B. J. SNELL, California Nurse Midwives Association	10
SUSANNE PHILLIPS, California Coalition of Nurse Practitioners	20
DEBORAH HAIGHT, California Association of Nurse Anesthetists	22
DEBORAH GRIBBONS (HARRIS), advanced practice nurse	24
NOREEN CLARKE-SHEEHAN, advanced practice nurse	27
KAREN SNOW-RODRIGUEZ, advanced practice nurse	30
DONNA NOWICKI, advanced practice nurse	32
JEANETTE MORROW, California Coalition of Nurse Practitioners	34
ARLENE SHEEHAN, neonatal nurse practitioner	36
PATRICE PRATOOMRATANA, respiratory therapist	39
TRICIA HUNTER, American Nurses Association	41
PAMELA BRODERSON, nurse practitioner	43
BARBARA BLAKE, United Nurses Associations of California	44
VIVIAN MILLER, nurse practitioner	45
DIANE FLETCHER, nurse practitioner	48

MARY E. LYNCH, Professor, University of California, San Francisco	49
ELLEN BAIR, nurse practitioner	50

<u>INDEX (Continued)</u>	<u>Page</u>
--------------------------	-------------

Public Testimony - Interim Wage Order:

JULIANNE BROYLES, California Chamber of Commerce, California Employers Association	52
TOM RANKIN, California Labor Federation	74
DONALD CLARK, Clark Pacific	85
SCOTT WETCH, State Building and Construction Trades Council	87
PATRICIA GATES, Van Bourg, Weinberg, Roger & Rosenfeld	91
JAMIE KHAN, Associated General Contractors	94
WARREN MENDEL, Southern California Contractors Association	94
PHIL VERMEULEN, Engineering Contractors Association, Fence Contractors, Sacramento and Marin Building Exchanges, Flasher Barricade Association	95
ALAN SMITH, National Plasterers Council	96
GEORGE OLIVEIRA, National Plasterers Council	101
ERIC CARLESON, California Spa and Pool Industry Education Council	102
ROBERT TOLLEN, California Independent Petroleum Association, Association of Energy Service Companies, Independent Oil Producers Agency	105
ED EHLERS, Associated California Loggers	108

MARK VEGH, TOC Management Systems	109
RICHARD HOLOBER, California Nurses Association	112
Afternoon Session	123
PATRICE PRATOOMRATANA (Continued), respiratory therapist	123

<u>INDEX (Continued)</u>	<u>Page</u>
SANDY ROCK, Mad River Community Hospital	126
LINDA HAYES, critical care registered nurse	126
CAROL MANTELL, registered nurse	132
AMY MEIER, Scripps Memorial Hospital	139
DAWN DINGWELL, California Association of Health Facilities	142
DEBBIE PORTELA, owner/operator, long-term care facility	147
JAY ALLEN, RCCA Services	150
KATE GATTUSO, respiratory therapist	153
JACK MCGEE, respiratory care practitioner	153
KERRY RODRIGUEZ MESSER, California Association for Health Services at Home	156
MARIANNE WARD, licensed vocational nurse, Interim Healthcare	160
HOLLY SWIGER, registered nurse, Vitas Hospice	162
MARY WEST PIOWATY, respiratory therapist	165
MELANIE LOYA, respiratory therapist	167
RANDY CLARK, California Association for Respiratory Care	170
STEVE HARVEY, respiratory care practitioner	171

CONNIE DELGADO ALVAREZ, California Healthcare Association	171
MICHAEL ARNOLD, California Dialysis Council	172
KATHRYN C. REES, California Assisted Living Facilities Association	175
JAMES NEFF, Motion Picture Association of America	178
<u>INDEX (Continued)</u>	<u>Page</u>
ROBERT JONES, National Association of Computer Consulting Businesses	179
RON McKUNE, The Employers Group	194
KELLY WATTS, American Electronics Association	195
JAMES ABRAMS, California Hotel and Motel Association	196
JOHN ZAIMES, energy generators	208
JOYCE ISERI, California Alliance of Child and Family Services	210
ROLF CLAUSSEN, Greater California Livery Association	213
ALAN SHANEDLING, Fleetwood Limousine	217
Commission Discussion/Action	220
Adjournment	227
Certification of Reporter/Transcriber	228

1 P R O C E E D I N G S

2 --o0o--

3 (Time noted: 10:10 a.m.)

4 COMMISSIONER CENTER: Good morning, everyone.

5 Welcome to our January 28 Industrial Welfare Commission
6 meeting.

7 I'd like to call the roll of the Commission --
8 excuse me -- call the Commission to order.

9 Our first order of business will be to swear in
10 our new commissioner, Mr. Bosco.

11 MR. BARON: Raise your right hand.

12 (Thereupon, Executive Officer Baron
13 administered the oath of office to
14 Commissioner Bosco.)

15 MR. BARON: Welcome aboard.

16 COMMISSIONER BOSCO: Thank you.

17 COMMISSIONER CENTER: Welcome and condolences,
18 Doug.

19 (Laughter)

20 COMMISSIONER CENTER: With that, Andy, would you
21 call the roll, please?

22 MR. BARON: Bosco.

23 COMMISSIONER BOSCO: Here.

24 MR. BARON: Broad.

1 COMMISSIONER BROAD: Here.

2 MR. BARON: Center.

3 COMMISSIONER CENTER: Here.

4 MR. BARON: Coleman.

5 COMMISSIONER COLEMAN: Here.

6 MR. BARON: Dombrowski.

7 COMMISSIONER DOMBROWSKI: Here.

8 COMMISSIONER CENTER: Thank you. It's
9 officially called to order.

10 First, a little housekeeping. We're going to
11 have as our first order of business the nurse
12 practitioners, advanced nurse practitioners and midwives,
13 and I'd like to limit that to one hour of testimony. And
14 I believe some individuals submitted cards in order.

15 If you have a lead person for your organization,
16 we'd like you to choose that person to come up first and
17 testify. We'll take the nurses that are supporting
18 exemptions first, then the nurses that are opposing
19 exemptions second, so we can -- and we'll limit to 30
20 minutes on each side. And if we have additional time,
21 other people can come forward. I'd like to have the
22 spokesman be limited to five minutes for their testimony,
23 and other individuals to three minutes.

24 And I want to avoid what we had in Los Angeles,

1 any commenting from the audience, outbreaks. Any
2 comments from the audience, we'll consider that your
3 testimony in front of the Industrial Welfare Commission.
4 So, hopefully, we'll limit that.

5 And Mr. Baron will be our timer up here, and
6 he'll nudge me on the hip when it's time to end your
7 testimony or wind it up.

8 First, I want to compliment Andy and the staff,
9 and Marguerite, for the amazing work trying to put these
10 regulations together and all the paperwork that has
11 floating into the office. I think Barry and I have even
12 commented, being labor individuals up here, a six-month
13 implementation time for this would have a little bit
14 easier for everybody, but that didn't happen. So, we're
15 under the gun to get it done.

16 We'll take as long as we can today to get our
17 due process carried out.

18 After we do the nursing, then we'll go into the
19 interim order and have testimony on that. And we'll have
20 one industry rep and one labor rep come in and open it
21 up, and the time they take, then also limit the testimony
22 on the other individuals to three minutes on that. And
23 then we'll see where we go.

24 With that -- with the advanced nurse

1 practitioners, do you have a spokesman who'd like to come
2 up first, or do you want to go in order, or --

3 MS. MORROW: Should we all come up and sit?

4 COMMISSIONER CENTER: Yeah. And then -- yeah,
5 the spokesman first, if you can. Then we'll go off the
6 order list.

7 Now, we have an individual spokesman you've
8 chosen, or -- are you guys all going individually, or --
9 how are we doing this?

10 DR. SNELL: Well, we've all gone in order, and
11 then people will be filling in.

12 COMMISSIONER CENTER: Well, unless you're chosen
13 a spokesman by your group, I'm going to go by the order
14 of the cards that were submitted. That's why I asked you
15 --

16 DR. SNELL: Then I guess I'll be the
17 spokesperson.

18 COMMISSIONER CENTER: Okay. Then why don't you
19 be the spokesperson? Thank you.

20 Then we'll go in order, after you speak. So,
21 you might have to get up and leave and let somebody else
22 -- or make room.

23 DR. SNELL: Okay.

24 COMMISSIONER CENTER: Thank you.

1 DR. SNELL: My name is B. J. Snell. I'm a
2 certified nurse midwife, and I'm here representing the
3 California Nurse Midwives Association as well as advanced
4 practice nurses, which we all are.

5 I welcome the opportunity to address this
6 Commission again on behalf of the California Nurse
7 Midwives Association regarding the implementation of AB
8 60. First of all, I would like to thank the chair, Chair
9 Center, as well as the commissioners, and the very
10 patient and informative staff of the Industrial Welfare
11 Commission for their assistance and very professional
12 approach to this discussion. In particular, I would like
13 to point out the assistance of Michael Moreno, for his
14 help and guidance. It has been absolutely marvelous.

15 The California Nurse Midwives Association is
16 extremely concerned about the negative impact that this
17 law has already had on the practice of nurse midwifery
18 here in the State of California. I'd like to update the
19 commissioners on events that have taken place to date,
20 since the enactment of this law on January 1st, 2000.

21 A group of nurse midwives, originally four
22 midwives, were effectively laid off of their jobs. Three
23 were discharged completely, and one has retained work,
24 only in the office on an 8-hour shift basis. These

1 layoffs were a direct result of AB 60. In their
2 practice, they had contracted with women and families to
3 provide midwifery model of care during pregnancy, labor,
4 and birth. This model includes continuity of care from
5 the beginning of labor through birth. Now these women,
6 who sought and contracted for midwifery care, will not
7 receive that care.

8 The one remaining midwife had her privileges for
9 full-scope care changed immediately to eliminate night
10 and weekend coverage because of the overtime requirements
11 after 8 hours of work.

12 So, with the enactment of this law, three
13 midwives with a very thriving practice in Central
14 California are unemployed. One has had her practice
15 severely restrained. And, more distressing, the women in
16 their practice who sought out that care now have no
17 choice.

18 Another large nurse midwifery service has been
19 severely impacted by this new law. Prior to the
20 enactment, the service covered the needs of their
21 practice through 8-, 10-, 12-, and 24-hour blocks of
22 time, and nurse midwifery providers were salaried
23 employees. This gave the midwives the ability to be
24 flexible and creative in their practice. They offered

1 extended hours of care in order to accommodate needs of
2 working women and families. In addition, it allowed the
3 providers to attend the needs of women in a continuity
4 fashion during their labor and birth.

5 Prior to the new year, the nurse midwifery
6 service was counseled that there would be no further
7 schedules that included shifts beyond 8 to 12 hours. In
8 addition, the chief financial officer advised that the
9 budget had to remain neutral because of the large deficit
10 the facility was already facing due to the large indigent
11 population that this hospital serves. The consequences,
12 if the service desired 12-hour shifts, meant a reduction
13 in their base rate of pay in order to remain that budget
14 neutrality.

15 These changes have had monumental consequences
16 in this practice, from the professional restraint issues
17 to the personal distress. Physician employees that
18 perform the same job -- and they are employees -- for
19 comparable pay in the institution are exempted from this
20 law, as the same work does fit the professional category.

21 Also, in this facility as well as many, there
22 are employee midwives and there are independent
23 contractor midwives. This sets up a dual standard of
24 care and unfair competition.

1 It is perplexing to the California Nurse
2 Midwives Association that comparable job descriptions for
3 nurse midwives and physicians can be regulated
4 differently because of the basic licensure of the
5 individual. The basic licensure does not provide the
6 legal authority to practice the profession of midwifery.
7 Only with advanced certification by the state that
8 permits the practice is midwifery allowed.

9 Regulation of midwifery practice under this law,
10 with the current healthcare budgets, restrains the
11 practice of our profession. Reduction in base rate of
12 pay in order to remain budget neutrality impacts nurse
13 midwives long-term differentially from their physician
14 colleagues, especially in the area of retirement
15 benefits.

16 Relief through an exemption that would provide
17 for 12-hour days will not solve the dilemma for the nurse
18 midwives, nor their patients in this state. As
19 previously mentioned, the labor and birth process is
20 unpredictable, and many times requires longer than 12
21 hours at a time. In order to perform our professional
22 duties, nurse midwives must be exempt so they can remain
23 in salaried positions and maintain their full scope of
24 practice as allowed by law.

1 Healthcare is struggling to develop creative
2 ways to provide quality and quantity professionals to
3 meet the demands of the population with operating budgets
4 that are very restricted. The two examples were provided
5 in order to let the Commission know of how this law has
6 already negatively impacted the professional practice of
7 midwifery in the State of California. Many employers
8 have contacted the CNMA to discuss their intentions to
9 comply with the new law and make significant changes in
10 the practice, unless relief is granted. This law
11 provides only for one resource, and that is through this
12 Commission.

13 We have provided information to you that
14 outlines the education, standards, and credentials that
15 are required for additional certification to practice as
16 an advanced practice nurse. This information clearly
17 demonstrates that we meet the requirements for exemption,
18 in that we are engaged in work that is primarily
19 intellectual, creative, and which exercises discretion
20 and independent judgment, and we earn a monthly salary
21 that is no less than at least twice the minimum wage
22 within the state.

23 I am reminded, in closing, of a saying that I
24 ran across a few weeks ago that I think is apropos. It

1 says, "Experience is a hard teacher: she gives the test
2 first and the lessons afterwards." We have taken the
3 test and are now getting the lessons that go along with
4 it. Hindsight is always 20-20.

5 This law has very good intentions and, I think,
6 will protect a lot of workers in the state, and we're
7 certainly supportive of that. But we hope we can learn
8 from the lessons that all does not fit one.

9 It is our hope that the commissioners take into
10 account the major negative impact that this new law has
11 created for our profession. The CNMA would seek the
12 Commission to move to exempt nurse midwives from the
13 requirements of AB 60 today, so that we may remain in
14 salaried positions and practice as allowed by law. Your
15 quick resolve will remedy the concerns of the profession
16 before any further restrictions are placed.

17 We thank you again so much for your
18 consideration and hope we will have a positive response
19 or guidance from the Commission on a very quick
20 resolution to this issue.

21 Thank you.

22 COMMISSIONER CENTER: Any questions?

23 COMMISSIONER BROAD: Do you have to be a
24 registered nurse to be a nurse midwife?

1 DR. SNELL: You do not have to be a registered
2 nurse to be a midwife in the State of California. There
3 are two pathways for midwifery in the State of
4 California.

5 COMMISSIONER BROAD: Would you explain that?

6 DR. SNELL: One path is that you are a
7 registered nurse initially, and then go to a school that
8 requires you to be a registered nurse in order to gain
9 the education and credentials as a midwife. The other
10 pathway is that you do not have to be a nurse, and you go
11 to a school that prepares you to be a midwife, and then
12 you are licensed through an agency other than the Board
13 of Registered Nursing.

14 COMMISSIONER BROAD: Okay. Now, my other
15 question is, are other advanced practice nurses in the
16 other categories, other than midwifery, are they required
17 to be registered nurses?

18 DR. SNELL: Yes. Yes, they are.

19 COMMISSIONER BROAD: Okay. Have you sought any
20 -- and this is respect -- there's obviously a clear
21 distinction here between midwives and other advanced
22 practice nurses -- in the operative place in the statute,
23 it says,

24 "In addition to the requirements of subdivision

1 (a), registered nurses employed to engage in the
2 practice of nursing shall not be exempted from
3 coverage under any part of the orders of the
4 Industrial Welfare Commission."

5 It's very succinct language.

6 Have you sought any guidance from the Labor
7 Commissioner as to whether midwives are "registered
8 nurses employed to engage in the practice of nursing"?

9 DR. SNELL: We have not.

10 COMMISSIONER BROAD: I would suggest that you
11 seek that guidance, because it seems to me that the
12 statute is very clear and unambiguous. And with respect
13 to your group, it may be that they are not "engaged in
14 the practice" -- they are not "employed to engage in the
15 practice of nursing," because people in that licensed
16 category do not have to be registered nurses in order to
17 engage in that occupation. And it would seem to be that
18 before you come to the Commission and ask for an
19 exemption, you might clarify whether the Labor
20 Commissioner believes, at this point, that midwives fall
21 outside of this statutory requirement.

22 DR. SNELL: And therefore would then be exempt?

23 COMMISSIONER BROAD: Yes.

24 DR. SNELL: They would fall, then, into the

1 professional category? Is that --

2 COMMISSIONER BROAD: Well, they would not be
3 prohibited from exemption by that section. They would
4 still, as you pointed out, have to meet the other
5 standards; that is, that they're engaged in a certain
6 kind of work and that they meet the salary test and that
7 they're primarily engaged in that work, and so forth
8 that's all -- in the other part of the section, but that
9 they are not prohibited from being exempted based on
10 Section 515(f) of the Labor Code.

11 DR. SNELL: And if I may ask a question back,
12 if, in fact, that we do approach the Labor Commissioner
13 with that, is that something that is likely to be a very
14 quick remedy? Because as we -- as I provided in the
15 testimony, these things have already taken effect. And
16 unless these particular places get something official
17 very quickly, the nurse midwives that have already been
18 laid off will not be reinstated, and the nurse midwives
19 that are in the large system that has been changed
20 dramatically will not change right away. And these
21 patients are the ones that we are concerned about.

22 COMMISSIONER BROAD: I understand your question.
23 I don't know, as an individual commissioner, how quickly
24 they respond to these opinion letters, although you could

1 have asked for this opinion letter at any time since the
2 passage of AB 60, which was, you know, eight months ago.
3 But there are representatives, I believe, of the Labor
4 Commissioner's Office in attendance here, and you can
5 simply ask the question, what the turnaround time is.
6 But I believe that that would be, at this juncture, the
7 appropriate path for you to go on this issue. It might
8 very well resolve the issue, at least for that group, one
9 way or the other. And then, if you still feel aggrieved,
10 you can always return to the Commission and petition for
11 whatever relief is appropriate in your opinion.

12 DR. SNELL: Thank you.

13 COMMISSIONER CENTER: Thank you.

14 Now are we having individual, groups or -- are
15 we individuals now? It's now another group?

16 MS. MORROW: Um-hmm.

17 COMMISSIONER CENTER: Which group are you --

18 MS. MORROW: Well, actually, we have three
19 groups represented here, and myself and Susie Phillips,
20 on the end, are from the California Coalition of Nurse
21 Practitioners.

22 COMMISSIONER CENTER: Okay. And you're with --

23 MS. HAIGHT: And I'm Deborah Haight, from the
24 Nurse Anesthetists.

1 COMMISSIONER CENTER: Okay. Why don't we have
2 extended testimony from one of yours, and then you.
3 Let's keep this to five minutes, if we can.

4 MS. MORROW: Okay.

5 Do you want to go first?

6 MS. PHILLIPS: Uh-huh, sure.

7 Chairman Center and commissioners, my name is
8 Susanne Phillips, and I'm a practicing nurse practitioner
9 in the State of California. I would like to thank you
10 all for hearing our testimony this morning and for the
11 hard work that you've already put into this thus far. We
12 very much appreciate that.

13 If AB 60 is implemented without an exemption for
14 advanced practice nurses, many nurse practitioners in the
15 State of California will lose their jobs to healthcare
16 providers such as physicians and physician assistants,
17 who are covered or may be covered under the professional
18 exemption.

19 Nurse practitioners work in a variety of
20 settings, which you may know, many of whom are employees
21 in hospitals and healthcare organizations. The majority
22 of nurse practitioners work in primary care, such as
23 adults, family, women's health, and pediatric. They see
24 scheduled patients, carry pagers for after-hours calls,

1 attend to emergencies after hours. There are other nurse
2 practitioners in sub-specialties such as neonatal nurse
3 practitioners, who provide 24-hour coverage in-house to
4 critically ill premature infants. They assess, diagnose,
5 write orders for treatment of these critically ill
6 infants, and work much in the same capacity as the
7 residents and physicians in these
8 -- in these intensive care units. Similarly, acute care
9 nurse practitioners also provide 12- to 24-hour coverage
10 in intensive care units for the adults and also emergency
11 departments. They work in the same role as the staff
12 physicians and residents as well.

13 The responsibilities of the nurse practitioner,
14 regardless of the specialty, are above and beyond those
15 of a registered nurse. As you can see, the scope of
16 practice and responsibility extend way beyond the 8-hour
17 day.

18 Similar to physician and nurse midwife services,
19 nurse practitioners services are a mandated service
20 available to California residents, under the rules and
21 regulations of the Health Care Financing Administration.
22 MediCal regulations require that those covered by MediCal
23 have access to nurse practitioner services. Inasmuch as
24 each of these services overlap, we should all be included

1 in this professional exemption.

2 In conclusion, nurse practitioners are licensed
3 as registered nurses; that is correct. But we have
4 advanced education and training beyond that of a staff
5 registered nurse. By definition, nurse practitioners
6 clearly function as healthcare professionals who also
7 engage in work that is primarily intellectual and
8 creative and requires the exercise of discretion and
9 independent judgment that is required of an exempt
10 employee. To implement AB 60 without exemption for
11 advanced practice nurses would prohibit nurse
12 practitioners from providing the quality care they
13 provide to the patient populations they see and would
14 effectively replace us by other healthcare providers who
15 are considered exempt.

16 Thank you very much.

17 COMMISSIONER CENTER: Thank you.

18 MS. HAIGHT: I'm Deborah Haight. I'm the
19 president of the California Association of Nurse
20 Anesthetists, and I'm also a practicing nurse
21 anesthetist.

22 We also appreciate that all of you have a
23 challenging, complicated task of implementing AB 60, and
24 we thank you and your staff for the time and attention

1 that you've already given us as we have talked about the
2 need of advanced practice nurses to have the ability to
3 have the professional exemption. As you go through the
4 process of looking especially at the California
5 healthcare industry, we appreciate being one of the first
6 ones able to talk to you about our problems.

7 We need your help. Nurse anesthetists are used
8 interchangeably with physician anesthesiologists. We are
9 able to do pre- and post-op, pre-anesthetic evaluations,
10 post-op anesthetic evaluations, choose the anesthesia
11 agents that we use, choose the -- work with the surgeons
12 for all kinds of cases, giving all kinds of anesthetics.
13 We -- our physician colleagues, the anesthesiologists,
14 are exempt as professionals. We compete directly with
15 them, and we also work with them. And having them able
16 to have this professional exemption and not our -- the
17 nurse anesthetists puts us at a devastating disadvantage.
18 And it's definitely a restraint of trade.

19 I happen to work for a group in northern
20 California of about 180 -- that employs 180 nurse
21 anesthetists, and we, in lieu of overtime in the last few
22 years, had our base pay increased; our vacation time was
23 worth more, educational leave, our sick time. When we go
24 to get loans for our houses and cars, our base salary is

1 higher and worth more, and we're able to take care of our
2 families better. To have -- our retirement is also worth
3 more.

4 To now be placed in a non-exempt position means
5 that we lose more base pay, more retirement benefits.
6 The very law that is supposed to protect and help
7 California workers actually turns out to cause our
8 livelihood to decrease, but also is devastating for our
9 practice in California.

10 We appreciate your time and attention and look
11 forward to working with you further on this issue.

12 COMMISSIONER CENTER: Thank you.

13 What I'd like to do now is bring up the side
14 that is opposing the exemption, then go to the individual
15 nurses' testimony, if we could.

16 Is there anybody that's in opposition now to
17 these proposed exemptions, or is there testimony? Do we
18 have anybody from the other side?

19 (No response)

20 COMMISSIONER CENTER: I guess we're just going
21 to go through names, then.

22 I have -- and please, if you have anything to
23 add, add, but if it's similar testimony, you can just
24 state your name and give your position and make it a

1 little bit faster. We'd appreciate that.

2 I have Deborah Gribbons.

3 MS. GRIBBONS: That's me.

4 COMMISSIONER CENTER: Okay.

5 MS. GRIBBONS: Good morning. Good morning, Mr.
6 Center and colleagues. Thank you so much for the
7 opportunity to hear my concerns about AB 60 and how it
8 adversely affects advanced practice nurses. My name is
9 Debbie Harris, and I work at Children's Hospital, Los
10 Angeles, as an advanced practice nurse, specifically as a
11 pediatric nurse practitioner in the Division of
12 Hematology/ Oncology. I have a master's degree and am
13 nationally certified as a pediatric nurse practitioner.

14 As an advanced practice nurse, I want
15 professional exemption from state wage and hour laws. As
16 my colleagues said, advanced practice nursing jobs are
17 fundamentally different from staff nurse roles. The
18 California Nurse Practice Act identifies four areas of
19 advanced practice nurses: specifically, the pediatric
20 nurse practitioner, certified registered nurse
21 anesthetist, certified nurse midwife, and the clinical
22 nurse specialist. As a group, we are all registered --
23 we are all registered nurses. That's our base education.
24 From that point, additional education and training was

1 obtained in subspecialized areas. We generally hold
2 advanced degrees, masters or doctorates in nursing. Most
3 of us also hold state or national certification in our
4 areas of subspecialty.

5 Advanced practice nurses' jobs differ from that
6 of a bedside nurse. For example, I independently see
7 children with blood diseases in my clinic. I perform
8 physical exams, interpret lab and diagnostic tests,
9 diagnose illness, and formulate treatment plans. The
10 bedside nurse carries out my orders.

11 I have a furnishing license granted by the State
12 of California that enables me to order medications,
13 including narcotics. I have applied for a DEA number.
14 This advanced function of ordering narcotics is very
15 important to my practice. I take care of children who
16 have sickle cell disease, and pain is the hallmark of
17 their disease. Thus, prompt assessment and intervention,
18 including pain medications, ordering of narcotics, is
19 very important for my job. The bedside nurse can
20 administer the pain medications that I've ordered.

21 So, as you can see, my scope of practice differs
22 greatly from that of a bedside nurse.

23 Patient problems don't arise within an 8-hour
24 shifts. When my patients suffer strokes, severe painful

1 events, or lung infarction, I don't look at my watch and
2 decide if I can take care of them. I need flexible hours
3 of employment that will allow me the ability to apply my
4 specialized training and knowledge to my clinical
5 practice as the need arises. If I can't do this, my
6 patient care will suffer and my job satisfaction will
7 spiral downwards.

8 Just as my physician colleagues can't close shop
9 and stop treating patients at a designated time, I can't
10 do this either. I cannot work as an advanced practice
11 nurse on a shift basis.

12 Nurse practitioners have a record of excellence
13 for patient safety, quality of care, acceptance by
14 patients and physicians, and cost-effectiveness. To
15 demonstrate that, I previously submitted an article,
16 written by Mundinger and colleagues that was published in
17 the *Journal of the American Medical Association* this
18 month, looking at primary care outcomes in patients
19 treated by nurse practitioners and physicians. At first,
20 what I heard -- yes?

21 Okay. Thank you.

22 In closing, a nurse is not a nurse is not a
23 nurse. There are differences between the role of an
24 advanced practice nurse and a bedside nurse. I hope that

1 you, Mr. Center and colleagues, will understand these
2 differences and realize that the same legislation, AB 60,
3 should not be applied as an umbrella to all RNs. I urge
4 you to interpret AB 60 to exclude advanced practice
5 nurses.

6 Thank you very much, Mr. Center and colleagues.

7 COMMISSIONER CENTER: Thank you.

8 Noreen Clarke-Sheehan?

9 MS. CLARKE-SHEEHAN: Good morning.

10 COMMISSIONER CENTER: Good morning.

11 MS. CLARKE-SHEEHAN: Thank you for the
12 opportunity to speak to you.

13 I am an advanced practice nurse and have my
14 master's degree in family nursing. I am specialized in
15 the care of children with cranial, facial, and cleft
16 anomalies. The care of these children requires a multi-
17 disciplinary approach. I've served for the past several
18 years as both the coordinator for this team and the
19 clinical nurse specialist on the team. I find my work
20 very rewarding and intellectually stimulating. I enjoy
21 following the children and their family along the
22 continuum of care, which usually extends into young
23 adulthood.

24 As an advanced practice nurse, I have

1 responsibility for the patients over the duration of
2 their treatment plan, not just at any one point in time.
3 I provide essential continuity of care across many
4 settings. I have the pleasure to participate and to
5 watch the children with facial differences go from the
6 crisis of a birth with a deformity to becoming a fully
7 participating member of society.

8 My job as an APN requires that I work 10 hours
9 on some days and 6 hours on another day. The loss of the
10 exemption eliminates my job flexibility. I want and need
11 this flexibility.

12 As a working mother of two children, this
13 flexibility has enabled me to remain in the workforce. I
14 can and do adjust my hours to meet both the needs of my
15 personal families and the families which I service. I
16 feel I am better able to provide family-centered care by
17 being flexible.

18 For California, this means decreased ability to
19 recruit and retain expert nurses. If these professionals
20 don't choose to work in California under the new law,
21 advanced practice nurses will have limited ability to
22 teach classes, lecture at meetings, or conduct research
23 to improve care. Professional autonomy and
24 responsibility require flexibility.

1 I would like to give an example of one of the
2 facets of my role as an advanced practice nurse and how
3 AB 60 will impact my practice. Each day in California,
4 at least one infant is born with a facial cleft. No one
5 was planning for this deformity, no one expected it.
6 Rather than a blessing, this birth becomes a crisis for
7 the family. The baby looks very different. He cannot
8 eat as normal babies do. All the expectations that
9 families have had in planning for this baby have been
10 disrupted. Intervention at this point is essential. I
11 help the family get through this crisis by educating them
12 on how to feed their child with a cleft and the surgical
13 timing and care needs for their child. This establishes
14 me as the professional who will help guide them through
15 the future care of their child. This early intervention
16 is fundamental in establishing a relationship for the
17 long-term care that lies ahead.

18 AB 60 denies me the flexibility to respond to
19 these families at the time of the initial crisis. Babies
20 are generally not born Monday through Friday, 8 to 4:30.

21 The essence of advanced practice nursing is
22 professional autonomy, accountability, and flexibility to
23 meet patient and family needs when they occur. But in
24 the language of AB 60, California now considers these

1 essential professionals as individuals who do work that
2 is not primarily autonomous, intellectual, or creative.
3 The State of California has decided that advanced
4 practice nurses do work that doesn't require the exercise
5 of discretion and independent judgment. I do not believe
6 it was the intent of AB 60 to deprofessionalize advanced
7 practice nurses.

8 I trust that you and the members of the IWC will
9 give this issue serious consideration as you consider the
10 impact of AB 60 on my practice.

11 COMMISSIONER CENTER: Thank you.

12 Karen Snow.

13 MS. SNOW-RODRIGUEZ: Yes. Good morning.

14 COMMISSIONER CENTER: Good morning.

15 MS. SNOW-RODRIGUEZ: Thank you for your time. I
16 will try and make this brief.

17 The elimination of exemption for advanced
18 practice nurses threatens our individual jobs and our
19 careers collectively, as you have already heard.

20 I work at Children's Hospital, Los Angeles, and
21 I am an advanced practice nurse working in the role as a
22 pediatric nurse practitioner in the Department of
23 Pediatric Surgery. I have a master's degree in nursing,
24 and I am also nationally certified.

1 At CHLA, advanced practice nurses are specialist
2 clinical practitioners. We do physician-type work.
3 Physician assistants, who are used similarly at
4 Children's, remain exempt. Advanced practice nurses at
5 my hospital are well compensated as exempt employees.
6 Our compensation is at the same level as nursing
7 management.

8 As mentioned previously, our jobs are not
9 confined to 8-hour shifts. If the hospital has to pay us
10 overtime, they will stop using advanced practice nurses,
11 and we will use -- and they will be forced or choose to
12 use exempted physician assistants. My employer will use
13 a physician assistant who is not a registered nurse.
14 Even if there are not enough physician assistants to
15 replace APNs, hospitals such as mine cannot afford to pay
16 us our overtime. They will be forced to cut back
17 advanced practice nursing hours, which will be
18 detrimental to the care of our patients. This law
19 eliminates my ability to carry the pride of my advanced
20 nursing education.

21 Just a personal example of my day is, on a given
22 day, I am available to approximately seven to ten
23 surgical services, approximately twenty to thirty
24 surgeons and physicians, and their patients and families,

1 to answer questions regarding surgical preparation, pre-
2 operative, inter-operative, post-operative care. These
3 questions and consultations do not come to me on an 8-
4 hour -- in an 8-hour day. This is ongoing work that I am
5 responsible for on a 24-hour basis.

6 My advanced practice colleagues and I will be
7 out of a job, and our career opportunities are going to
8 evaporate. This law will eliminate my ability to provide
9 a living for my family. And I hope that you would take a
10 strong look at this.

11 Thank you.

12 COMMISSIONER CENTER: Thank you.

13 Donna Nowicki.

14 MS. NOWICKI: Yes. I'm Donna Nowicki,
15 Children's Hospital, Los Angeles. I'm an advanced
16 practice nurse, specifically a nurse practitioner. My
17 subspecialty is pediatric surgery.

18 And certainly, I'm not going to repeat
19 everything my colleagues so eloquently said; I'm just
20 going to give a personal testimony.

21 In my specialty, I manage a group of pediatric
22 surgical patients. I see them in my clinic, I see them
23 in the emergency room. When they're ill, I admit them to
24 the hospital. While in the hospital, I do manage their

1 care. I write all their laboratory and X-ray orders. If
2 they need to go to the operating room, I can accompany
3 them to the operating room and oftentimes will assist the
4 surgeon in their surgeries. When they're well, I
5 discharge them from the hospital. I'm also an available
6 consultant for other clinics and, as I mentioned before,
7 the emergency room.

8 I'm these children's health provider. That's
9 what they know me as. And as an example of this, over
10 the holidays one of my patients was vacationing in Italy.
11 And at three o'clock in the morning, I got a phone call
12 from a surgeon in a Rome hospital requesting medical
13 information for the patient. The mother had given him my
14 card. At first he had been insistent on speaking to a
15 surgeon, but this mother was equally as insistent that he
16 speak to me. She told him that I was the one that knew
17 her patient -- her child better than anybody else.

18 It's clear that we have been accepted as health
19 providers in this country, and that's slowly starting to
20 spread throughout the world.

21 As many here are, I am considered an expert in
22 my field. I lecture nationally and internationally. I
23 have published -- I have a chapter coming out next month.
24 I'm also involved in research studies. To strip me of my

1 professional status and put me as an hourly employee is
2 quite the hardship. And in my twenty years as a nurse
3 practitioner, I certainly have seen obstacles, and we've
4 hurdled some of those obstacles. But this, by far, is
5 one of the darkest moments that we're seeing as advanced
6 practices nurses in this state. And certainly, you don't
7 want to chase us out to other states where we're accepted
8 as professionals.

9 So, again, I will ask for professional exemption
10 for advanced practice nurses, our nurse midwives, nurse
11 practitioners, clinical nurse specialists, and nurse
12 anesthesiologists.

13 Thank you very much.

14 COMMISSIONER CENTER: Thank you.

15 I had -- did Jeanette Mason sign in with a card?
16 You signed in with a card?

17 MS. MASON: Yes.

18 COMMISSIONER CENTER: One of these cards too?

19 MS. MASON: Yes.

20 COMMISSIONER CENTER: Well, I didn't see your
21 name in here. Your card was on my podium.

22 Would you like to come up, ma'am?

23 MS. MASON: Yeah.

24 COMMISSIONER CENTER: I didn't get a card from

1 you.

2 Oh, I'm sorry. Are you --

3 MS. MORROW: I'm a Jeanette also.

4 COMMISSIONER CENTER: Jeanette --

5 MS. MORROW: Morrow.

6 COMMISSIONER CENTER: Jeanette Morrow.

7 Go ahead, Jeanette, first.

8 MS. MORROW: Thank you.

9 COMMISSIONER CENTER: We have the other

10 Jeanette.

11 MS. MORROW: I'm actually giving individual

12 testimony. And I'm a nurse practitioner also. I think

13 we've been very well represented here. I work in the

14 emergency room at Mercy General Hospital, which is just

15 down the street. So, if any of you get the flu, you may

16 be seeing me.

17 (Laughter)

18 MS. MORROW: I've been seeing a lot of people

19 with the flu.

20 When patients come into the emergency room, they

21 are triaged, and they either go to the emergency room or

22 to the clinic. They see either a doctor or the nurse

23 practitioner. And I'm very well qualified to take their

24 history, do their physical exam, order their lab tests,

1 their X-rays, giving them breathing treatments, treat the
2 flu. A lot of people have needed intravenous fluids,
3 they've needed breathing treatments, all kinds of
4 symptomatic treatment to help them get over the virus.
5 And those are the kind of things that nurse practitioners
6 do.

7 I consider myself a professional, as does my
8 employer. The nurse practitioners are included in the
9 professional staff. We attend the core meetings at which
10 decisions are made on our practice and the practice of
11 the emergency room, we also have the same benefits as the
12 physicians, we're included in the physician retreat. And
13 we also compete with physician assistants. My employer
14 also employs physician assistants, who will be
15 professionally exempt. And so, I feel like my job is in
16 jeopardy as well.

17 And I'm just trying to reiterate what other
18 people have said about status as professionals and our
19 desire for professional exemption.

20 Thank you.

21 COMMISSIONER CENTER: Thank you.

22 I'm sorry. We're strictly on advanced practice
23 nurses.

24 MS. MASON: A near miss.

1 COMMISSIONER CENTER: Yeah.
2 Let's see. Susanne Phillips.
3 MS. PHILLIPS: I've already talked.
4 COMMISSIONER CENTER: Okay. Sorry.
5 Jeanette Morrow.
6 MR. BARON: She just spoke.
7 COMMISSIONER CENTER: I'm not doing very well
8 now.
9 B. J. Snell.
10 MR. BARON: She spoke.
11 COMMISSIONER CENTER: She spoke.
12 Arlene Sheehan.
13 MR. BARON: She spoke too.
14 Patricia Pratoomratana. I think I destroyed
15 your name. Sorry.
16 MS. SHEEHAN: Good morning. My name is Arlene
17 Sheehan. I'm a neonatal nurse practitioner. I don't
18 think you've heard from one of us yet. I represent nine
19 neonatal nurse practitioners at Packard Children's
20 Hospital at Stanford, a number of whom are here with me
21 today, to hope to convince you to exempt us from the
22 provisions of AB 60.
23 I'd like to take this opportunity to demonstrate
24 why I think our group should be exempted under the

1 professional exemption, and I thought I would just give
2 you an idea of what we do, since you probably don't know.
3 And I think it will become apparent to you that we are
4 professionals and should be exempted.

5 We work 12- to 24-hour shifts at Stanford in the
6 intensive care unit. That's the newborn intensive care
7 unit. We work alongside a team of two to three
8 physicians. We work the same shifts as the physicians
9 and, in fact, do the same job. On a typical shift, the
10 last shift I worked, I was called to the delivery room to
11 attend the delivery of a 29-week gestational age infant,
12 born very prematurely, born with a low heart rate, a low
13 respiratory rate. I was the person in attendance at the
14 delivery; I was not there with a physician. I placed an
15 endotracheal tube, I provided assisted ventilation. I
16 brought the baby back to the newborn intensive care unit,
17 where I placed lines, ordered respiratory treatments,
18 ordered medications, supported the baby in whatever way
19 it was necessary, ordered X-rays, interpreted labs, and
20 then contacted my attending physician to continue
21 providing that kind of level of care for this baby.

22 As you can see, neonatal nurse practitioners do
23 not provide nursing care. What we do is we direct
24 nursing care. We're able to do that because of advanced

1 studies. I personally have three years of master's level
2 preparation. I'm also certified in the State of
3 California, I passed a certification exam, as did my nine
4 colleagues.

5 Should this Commission decide not to exempt us
6 from AB 60 and force us to work 8-hour shifts, we would
7 be providing very fragmented care. We could no longer
8 work alongside our physician colleagues who work 12- to
9 24-hour shifts. We'd be coming and going at very odd
10 hours of days. We wouldn't be able to accept report on
11 these patients, as we're currently available to do.

12 We could not expect the hospital to pay us the
13 overtime to work 10-, 12-, and 24-hour shifts; it's just
14 not financially feasible. So, I think it would force the
15 hospital to look for healthcare providers who are
16 exempted from AB 60, for instance, physicians, to replace
17 us. It is our understanding that the Commission is
18 attempting to protect workers from long overtime hours,
19 but I think, in fact, AB 60 will have the opposite effect
20 and may actually lead to the destruction of the
21 profession of neonatal nurse practitioners if we're
22 forced to work 8-hour shifts.

23 Thank you.

24 COMMISSIONER CENTER: Thank you.

1 Patricia, I'll let you state your last name.

2 MS. PRATOOMRATANA: Hi. My name is Patrice,
3 first. My last name is Pratoomratana. That's okay. I'm
4 used to my name not being pronounced properly.

5 I am a respiratory therapist, but I'm here on
6 behalf of the hospital I work with in northern
7 California, a very small hospital, speaking on behalf of
8 all 12-hour-shift workers in our hospital.

9 I'm not going to get into the specifics of my
10 job. Just basically, as I've heard from a lot of other
11 people, hospitals can't afford to pay the time and a
12 half. And if the staff chooses to stay on 12-hour
13 shifts, I think we should have that option. I don't feel
14 very comfortable being forced to do certain things, and
15 this law is forcing certain hospitals to make their staff
16 go back to 8-hour shifts. And it's not feasible, it's
17 not good for the patients.

18 When you work with life and death every day, you
19 need at least a couple days more than one or two days off
20 here and there, just to regroup, just to mentally get
21 ready to go back to work and deal with life and sickness
22 every day. And that's going to limit us -- we're not
23 going to be able to do that any more.

24 COMMISSIONER CENTER: Excuse me. Are you an

1 advanced practitioner nurse?

2 MS. PRATOOMRATANA: I'm a respiratory therapist.

3 COMMISSIONER CENTER: But are you an advanced
4 practitioner nurse?

5 MS. PRATOOMRATANA: No.

6 COMMISSIONER CENTER: Okay. We're only taking
7 testimony on that issue right now. We'll take testimony
8 on the healthcare industry when we go on to the order.

9 MS. PRATOOMRATANA: Okay.

10 COMMISSIONER CENTER: Because there's other
11 people that want to testify, and we're limited to one
12 hour here.

13 MS. PRATOOMRATANA: Okay. Well, I was chosen as
14 a group to speak for the nurses and pretty much the whole
15 --

16 COMMISSIONER CENTER: For the -- of the advanced
17 practitioner nurses?

18 MS. PRATOOMRATANA: Right. Right. That -- I
19 was chosen to speak, so I thought, since we do the same
20 thing and work the same hours, we are both affected the
21 same way.

22 COMMISSIONER CENTER: But that -- in reference
23 to the healthcare industry, we're going to go into that
24 after eleven o'clock. I just don't want to take somebody

1 else's time that is directly affected by the professional
2 exemption.

3 MS. PRATOOMRATANA: Okay.

4 COMMISSIONER CENTER: That's what we're talking
5 about right now. And we'll do that, please.

6 MS. PRATOOMRATANA: Okay.

7 COMMISSIONER CENTER: And we'll bring it up in
8 the other session.

9 So, I have some people -- I have Tricia Hunter.

10 COMMISSIONER CENTER: Are they sending cards?

11 MS. HUNTER: I'm Tricia Hunter. I'm the
12 legislative advocate for the American Nurses Association
13 in California. And I appreciate the time the
14 commissioners and the Commission has taken on trying to
15 deal with this issue.

16 The points, I guess, I want to stress the most
17 is that there are advanced practice nurses out there that
18 are losing their jobs because of this exemption. I would
19 hope that, as we go through the process -- and we will
20 write the letter, as directed, to the Labor Commissioner
21 -- there are -- these are positions that, even though
22 nursing may have been how they got there, the positions
23 are very definitely beyond the basic practice of a
24 registered nurse. A midwife, you can get there two

1 routes, as was described. A nurse anesthetist literally
2 steps in for an anesthesiologist and does the same
3 duties. I, as a registered nurse, cannot do what a nurse
4 anesthetist does, within my license. It is beyond the
5 basic license of a registered nurse, as they do. And
6 then again, a nurse practitioner works in private
7 practice.

8 The ramifications of AB 60 go well beyond the
9 hospital. It is nurses who are in collaborative
10 practice, that receive a salary from a physician, are now
11 put in a position that that collaborative practice is in
12 jeopardy. It's nurses who join practices of other
13 healthcare practitioners to provide services like
14 anesthesia, who, because they, in the past, have received
15 a salary, are now in jeopardy because it's going to be
16 required that receive an 8-hour.

17 It is a critical issue for nursing. It does
18 take us back a long way in the battles that we have
19 fought to bring professional nursing, and in particular,
20 advanced practice nursing, to the forefront as providers
21 in the State of California. And we appreciate anything
22 you can do in helping us resolve this issue.

23 COMMISSIONER CENTER: Thank you.

24 I understand some people that are in opposition

1 have arrived. Could you please come up and state your
2 name?

3 And I explained, prior to your arriving, we'd
4 like to have one person to be the primary spokesman and
5 limit the testimony of the other person, and we're
6 running -- and so, we're -- I don't know who you choose
7 as your spokesman,
8 but --

9 MS. BRODERSON: Well, we're all three speaking
10 separately.

11 COMMISSIONER CENTER: Okay.

12 MS. BLAKE: It'll be brief. We'll be brief.

13 MS. BRODERSON: We'll be very brief.

14 MS. BLAKE: Okay.

15 MS. BRODERSON: All right. I'll go ahead and go
16 first. My name is Pamela Broderon. I'm an OB-GYN nurse
17 practitioner. I work in southern California for Kaiser
18 Permanente.

19 I'm here today representing over 400 registered
20 nurse practitioners who work for Southern California
21 Permanente Medical Group. As an advanced practice RNP, I
22 believe it is a disadvantage to our group to be exempt
23 from overtime. The profile of my day is not made up by
24 me, but rather, by some of the least educated individuals

1 in the healthcare structure, the appointment clerks. I,
2 along with my advanced practice colleagues, have
3 appointment slots designated for physical exams, return
4 appointments, GYN slots, OBs, et cetera, and there is no
5 penalty, in the form of overtime by my employer, for days
6 that exceed 8 hours if there is an exemption to overtime
7 for nurse practitioners.

8 The benchmarks of patients that I see will
9 certainly accelerate, and there will be absolutely no
10 accountability for how many in a day that I will be -- I
11 will be designated to see. My colleagues and I strongly
12 oppose an exemption to the overtime for the advanced
13 practice nurse practitioner.

14 I also would like to say that as an employee of
15 Southern California Permanente Medical Group, I do not
16 have the same benefits as physicians. Yes, our
17 accountability is the same to the patients, but wages,
18 benefits, and autonomy is clearly different.

19 I believe also that it is a health and safety
20 issue, not only to the patients we care for, but for the
21 licensure that we hold. So, my voice is strong
22 opposition to an exemption to AB 60.

23 COMMISSIONER CENTER: Thank you.

24 MS. BLAKE: My name is Barbara Blake. I'm the

1 state secretary for United Nurses Associations of
2 California. We represent 10,000 RNs, advanced practice
3 nurses, in southern California. We feel very strongly
4 that the RNP should not be exempt, but we think that you
5 may want to look at the midwives being carved out from
6 that group and being allowed to be exempt. Under the
7 BRN, the advanced practice nurses all hold separate
8 certifications, the public health nurses, the psychiatric
9 mental health nurses, the nurse anesthetists, the RNPs,
10 and the nurse midwives all hold different certifications
11 under the Board. So, we believe that you should carve
12 out nurse midwives if they're practicing more nurse -- or
13 they're practicing midwifery rather than nursing, and
14 that you may want to look at them as a special category.

15 I understand, on working with them, that they
16 feel strongly that they should be exempt from this. On
17 the other hand, the RNPs that we represent, we have done
18 a survey of those RNPs, and the overwhelming majority of
19 those nurses and -- or advanced practice nurses -- felt
20 that they should be left as nonexempt employees. So, we
21 would ask you to look at the certifications under the
22 advanced practice in different categories.

23 COMMISSIONER CENTER: Thank you.

24 MS. MILLER: Hello. My name is Vivian Miller,

1 and I'm a nurse practitioner with a master's. I work for
2 Kaiser, Panorama City, in internal medicine and
3 rheumatology. I'm also the clinic vice president for
4 UNAC.

5 The nurses I work with, the nurse practitioners
6 I work with, all agree with this statement: We support
7 AB 60 as it's written. We believe that without AB 60,
8 the employers will have the upper hand and be able to
9 dictate unlimited hours without adequate pay.

10 I think the pay should be equivalent to the
11 hours you work. And if not paid on hours worked, it'll
12 allow management the ability to adjust our schedules to
13 their advantage. For example, in 1992 when I started as
14 a nurse practitioner in internal medicine, I was given 45
15 minutes for a physical exam. That's been cut to 30
16 minutes, and within this last year, it was cut to 20
17 minutes. If this law is changed, there's going to be
18 nothing to prevent the administration or managers from
19 continuing to decrease this amount of time to, eventually
20 -- what? -- 10 minutes for a physical exam? We'd all be
21 working overtime on a daily basis without any monetary
22 reimbursement for that additional time.

23 I don't think we can allow our employers to
24 overburden us with unrealistic expectations, which is

1 what I think will happen if this law is -- if we're
2 exempt.

3 I think eliminating this law is just a deterrent
4 for managers to give us more work without adequate
5 compensation. And advanced nurse practice nurses do not
6 want to be exempt from these rules.

7 I believe there's a lot been said about
8 professionalism, and I think that all advanced practice
9 nurses are professionals. And I don't think being paid
10 an hourly salary diminishes that title of professional.
11 Compensation for hours worked doesn't impact our
12 profession.

13 We can support the midwives wanting to work
14 overtime, if that's their choice. I think they need to
15 realize, though, that the management may have the upper
16 hand with them also in this type of practice, and they
17 may be working longer hours than they expected to be
18 working on straight time.

19 We cannot support -- what we can't support is an
20 across-the-board change in this law that would eliminate
21 the overtime of advanced practice nurse practitioners.
22 Again, we do not want to be an exempt category. We want
23 to be paid for each and every hour we work.

24 I urge you not to eliminate the overtime for

1 nurse practitioners.

2 COMMISSIONER CENTER: Thank you.

3 MS. BLAKE: And let me clarify, because we came
4 in your late --

5 COMMISSIONER CENTER: Yeah.

6 MS. BLAKE: -- your lovely fog in Sacramento.

7 You're taking testimony on the rest of AB 60 and
8 the alternative work schedules later?

9 COMMISSIONER CENTER: Correct.

10 MS. BLAKE: So, we have submitted cards. You'll
11 return those to the staff?

12 COMMISSIONER CENTER: Yes.

13 MS. BLAKE: Okay.

14 MS. BRODERSON: Before I leave, I'd also like to
15 leave some letters from some of my colleague nurse
16 practitioners who also oppose AB 60 with the clerk.

17 COMMISSIONER CENTER: Thank you.

18 I have Diane Fletcher.

19 MS. FLETCHER: Hi. My name is Diane Fletcher.

20 I'm a nurse practitioner here in Sacramento with the med
21 clinic affiliated with the Mercy organization. I work in
22 an internal medicine department, and I support being a
23 nonexempt employee.

24 The one thing I wanted to bring to this

1 committee today is my concern about the overtime. Though
2 I think we deserve it, we are also in a competitive
3 market with physician assistants. So, we do the same
4 job. So, if we're going to be paid overtime, we have to
5 also look at categorizing the physician assistants as
6 professionals, because when we go for jobs in private
7 practice or in organizations like the med clinic, if they
8 can hire a PA who is going to be an exempt employee and
9 be in a position to hire us as a nonexempt, then our
10 marketability and our ability for retention in
11 organizations might be jeopardized.

12 So, that's the only point I really wanted to
13 make.

14 Thank you.

15 COMMISSIONER CENTER: Thank you.

16 Any other testimony on this issue?

17 PROFESSOR LYNCH: Yes. My name is Mary Lynch.
18 My card was there. I guess it got lost.

19 I'm a professor at the University of California,
20 San Francisco, and I represent the faculty from the
21 number one school in the nation to say that we are
22 thrilled that you can now use the words "advanced
23 practice nurse." However, what you do need is some
24 clarity on the key roles that advanced practice nurses

1 play in California.

2 Currently, nurse practitioners, and many other
3 forms of advanced practice nurses, are filling the key
4 gaps for medically under-served communities in the State
5 of California. At a time where, nationally, we are very
6 seriously concerned about the issue of medical errors, I
7 can guarantee that if you do not support the exemption
8 for advanced practice nurses, that you will be playing a
9 role in enhancing and increasing the number of medical
10 errors that occur in institutions in the State of
11 California.

12 And I'll gladly give you an example of how that
13 can occur. Most of the nurse practitioners that have
14 been here today have already spoken eloquently about the
15 issues, particularly for pregnant women and for sick
16 infants and children, and why pregnant women don't have
17 their babies on 8-hour schedules, and why extremely ill
18 infants and children don't automatically get better over
19 an 8-hour period.

20 Institutions have hired physicians, hundreds of
21 physicians, within the State of California to work in
22 intensive care units long hours. They have no specific
23 hourly requirement. Now, on the alternative, nurse
24 practitioners and advanced practice nurses, as employees,

1 are hired on, in many cases, 12- and 18-hour shifts, so
2 that they work in the same roles as their physician
3 colleagues.

4 As a faculty member and as a member in the State
5 of California, I am required to help educate the nurse
6 practitioner students, to help them see that they are
7 different than nurses. They have a higher level of
8 practice, they are required to have the same
9 credentialing as physicians, they are held to the exact
10 same scrutiny, both legal scrutiny and professional
11 scrutiny. For you to pull out this group of individuals
12 who are key providers for all of us in the State of
13 California will cause, I believe, many of the voters who
14 put you in these positions to be extremely concerned
15 about your judgment.

16 Thank you.

17 COMMISSIONER CENTER: Thank you.

18 (Applause)

19 COMMISSIONER CENTER: Any comments from the
20 Commission?

21 (No response)

22 (Laughter)

23 COMMISSIONER CENTER: Do you volunteer to be
24 removed?

1 (Laughter)

2 COMMISSIONER CENTER: Oh, excuse me. Sorry.

3 MS. BAIR: Good morning. Thank you for the
4 opportunity to speak. My name is Ellen Bair, and I'm a
5 pediatric nurse practitioner practicing at the Lucile
6 Packard Children's Hospital at Stanford. I have been a
7 pediatric nurse practitioner in the State of California
8 for twenty years, and I practice in the pediatric
9 otolaryngology -- better known "ENT" practice -- for
10 children at Stanford.

11 I strongly support leaving advanced practice
12 nurses in the exempt position and would urge you to take
13 a look at the testimony presented this morning to leave
14 us in the exempt position. I think my colleagues have
15 done a great job in representing the issues to leave us
16 exempt.

17 Thank you.

18 COMMISSIONER CENTER: Thank you.

19 Then, with no motions, this will conclude our
20 hearing on the advanced practice nurses, informational
21 hearing.

22 A suggestion is -- we're going to go into --
23 since I don't see any motions coming from the Commission
24 -- is we're going to go into another hearing on the

1 definition of "primarily" and "managerial," and I'd like
2 to hear in that hearing from the licensing body for the
3 nurses for the definition, for them, as to what your
4 duties are.

5 And with the nurse midwife practitioners, Miles
6 Locker is over here. I think you should get together
7 with him today and submit that letter, because I think
8 you have a compelling argument for an exemption since you
9 don't have to be required to be a nurse to be a licensed
10 midwife.

11 And with that, I'd like to go into the hearing
12 on the interim order and set the same parameters. We're
13 going to have a speaker from industry, one from labor,
14 then we'll go to individual testimony, by industries.

15 Our first speaker will be Julianne Broyles.

16 MS. BROYLES: Good morning, Mr. Commissioner,
17 commissioners. This is -- I'm Julianne Broyles, from the
18 California Chamber of Commerce. Thank you for the
19 opportunity to be here today.

20 I am testifying today on behalf of both the
21 California Chamber of Commerce and the following
22 organizations, who are members of the California
23 Employers Coalition: the American Electronics
24 Association, Associated Builders and Contractors of

1 California, the California Association of Health Services
2 at Home, the California Association of Employers, the
3 California Business Properties Association, the
4 California Grocers Association, California Manufacturing
5 Association, the California Newspaper Publishers
6 Association, the California Taxpayers Association, the
7 California Hotel and Motel Association, the Consulting
8 Engineers and Land Surveyors of California, the Lumber
9 Association of California and Nevada, the Printing
10 Industry Associations of California, Semper Energy, and
11 the Trade Contractor Alliance of Orange County.

12 We are appearing here today in response to the
13 notice of public hearing regarding the draft interim wage
14 order that will implement the provisions of Assembly Bill
15 60, the Eight-Hour Overtime Restoration and Workplace
16 Flexibility Act of 1999.

17 We have a number of issues that are technical in
18 nature, and I will try not to dwell too long on any one
19 of those, but in general, certainly, that California
20 employers and their employees need wage orders that are
21 easy to understand, wage orders that provide flexibility
22 in the choice of schedules to both the individual workers
23 and groups of workers, that contain clear definitions and
24 easy to understand definitions of obligations, of duties

1 of all concerned, that are easy for the employer to
2 administer and to implement in the workplace. They
3 certainly do not need wage orders that are filled with
4 legalese, that increase unnecessarily the paperwork
5 burdens of employers and the employees themselves, that
6 unduly restrict the availability of the flexible
7 schedules that are provided for in AB 60, and penalize
8 unintentional mistakes by workers and their employers
9 with increased legal and/or financial obligations.

10 I will work, if it's permitted, Mr. Chairman,
11 through the sections and provide specific comments for
12 each section in the interim wage order that is currently
13 before you for consideration.

14 The first section is the applicability section
15 of the proposed interim draft wage order. Currently, as
16 you well know, there are fifteen valid wage orders that
17 cover such industries as manufacturing to amusement parks
18 to broadcasting and to hospitals and hotels. However,
19 four industries have been historically exempt from the
20 IWC wage orders, and those have been, historically, on-
21 site construction, mining, drilling, logging. And we
22 contend, as the Coalition, that these industries -- that
23 these industries cannot be subject to the provisions of
24 AB 60 because AB 60 is a restoration of the 8-hour

1 overtime requirements, and, as you also know, the five
2 wage orders only were affected by actions taken by the
3 IWC in 1997. Those wage orders were 1, 4, 5, 7, and 9.
4 And we contend that you cannot restore something that was
5 never in effect in the first place.

6 There are, attached to our comments, two court
7 cases. I do understand that one is not published, and
8 the other one has been -- the other one actually has been
9 concluded with a stipulation from the Division of Labor
10 Standards Enforcement and the State Labor Commissioner.
11 And this is the Cooper Heat decision, that the industry
12 of on-site construction is not regulated and is not under
13 the issue of overtime, according to their office and that
14 court stipulation. As I said, it is attached to our
15 comments.

16 So, we do oppose their coverage underneath the
17 interim wage order and would respectfully request that if
18 the Commission so desires to cover these industries in
19 the future, that they actually follow the procedures laid
20 out in the current state Labor Code, which requires
21 public notice, public participation in hearings,
22 convening of wage boards with members of both the
23 employers and the employees affected, in order to legally
24 adopt a wage order that actually covers those industries

1 in the future.

2 Right now, we do have some very significant
3 issues with that and would certainly work with the
4 Commission, if they do decide to convene those wage
5 orders.

6 In proposed Section 2, which is the definitions
7 section of the draft interim wage order, there was --
8 there's some issues of concern to the Coalition. And one
9 of the issues is how the definitions are coming to be
10 interpreted within the draft interim wage order. And at
11 the December 15th hearing of the Industrial Welfare
12 Commission, the State Labor Commissioner delivered --
13 hand-delivered a memorandum to the Commission, which is
14 now published up on their Web site, the Department of
15 Industrial Relations' Web site, detailing a number of
16 policy decisions that the Labor Commissioner seems to
17 have taken it upon that particular Division to decide AB
18 60 actually does or does not cover, and actually take
19 some steps that we do find actually constitute an
20 underground regulation.

21 And there was a decision that came down a few
22 years ago called Tidewater Marine Western, Inc. v.
23 Bradshaw, where they did find that the policy and
24 procedure letters issued by the Department of Industrial

1 Relations and the Division of Labor Standards Enforcement
2 must be actually adopted through the Administrative
3 Procedures Act. And if they do not do so, they are in
4 violation of the law and have, in fact, issued an
5 underground regulation.

6 We respectfully request that the memorandum that
7 was hand-delivered to the Commission be stricken from
8 your record and removed from the policy record
9 determinations that you see -- or that you might have
10 with the interim wage order.

11 Proposed Section 3 is the executive-
12 administrative exempt status. There are certain
13 provisions in this particular section that the Coalition
14 members have some concerns about. We believe that,
15 unfortunately, the way it is currently constructed, you
16 will be, in effect, eliminating the ability for
17 businesses throughout the State of California to have a
18 part-time manager. And the reason for that is the
19 provisions within AB 60 do say that there is a salary
20 requirement, along with a duties requirement, obligation
21 for these exempt workers. Now, the way that it looks as
22 though it -- that it could be interpreted -- and this is
23 an example -- is that you could literally not have a
24 part-time manager who made less than a little less than

1 \$24,000 per year. And if you don't initially meet that
2 salary test, then that manager status is immediately
3 eliminated. The Coalition does urge you to review this
4 issue and to find some way to allow small businesses and
5 businesses of all sizes, in fact, to have a part-time
6 manager.

7 Now, when you get to an exempt status -- I'm
8 sure all of you are familiar with the duties and the
9 salary requirements that are set out in the federal Fair
10 Labor Standards Act -- but what you have within there is,
11 once they have reached that exempt status, overtime, of
12 course, is not due. What that permits, on a part-time
13 manager basis, is that money that might be set out and
14 aside for overtime purposes to then be directed towards
15 benefits that that part-time manager might not otherwise
16 be able to obtain.

17 A good example of this is -- I had a small
18 business call me the other day and say they're changing
19 the status -- 25 employees -- they're changing the status
20 of three of their part-time managers to nonexempt
21 workers, and that, by doing so, it's costing them their
22 ability for pension co-payments from their employer, co-
23 payments on their health insurance by their employers,
24 and other fringe benefits that that employer supplies,

1 because the money now must be directed towards that
2 salary base that you have before you in the interim wage
3 order as it currently is drafted.

4 We do think it would be a positive solution for
5 the Commission to consider permitting a pro-ration of the
6 salary test so you do maintain the ability for managers -
7 - for businesses to have a part-time manager, people who
8 may just work during the day when their children are at
9 work, but they may not meet, you know, the -- they may
10 not go over 20 or 25 hours in the course of a -- in the
11 course of a week or a course of a -- their workweek. So,
12 we do think that's an important item for you to look at,
13 because I think it would be a significant adverse impact
14 on the workers of California, more than anything else.
15 And I believe that this administration certainly has
16 always advocated an expansion of benefits rather than a
17 limitation of it. And by doing so, you certainly would
18 be able to keep the ability of employers to supply those
19 health and other benefits to their workers.

20 COMMISSIONER CENTER: Ms. Broyles?

21 MS. BROYLES: Yes, sir.

22 COMMISSIONER CENTER: In reference to that,
23 would you -- you're proposing an exemption for part-time
24 managers. And what -- have they got 20 hours a week?

1 MS. BROYLES: Normally, part-time -- anything
2 over usually 30 hours is considered a full-time employee,
3 either by case decision -- we find it in the unemployment
4 insurance side of that. Usually they use a determination
5 of a full-time employee as anything over 35. I think the
6 hours that normally are considered part-time usually fall
7 between 20 and 30 hours per week, normally for a manager
8 status, for a part-time manager status.

9 COMMISSIONER CENTER: And in reference to losing
10 benefits, would you consider in your proposal that only
11 part-time managers that receive health benefits and
12 pension benefits would apply to this?

13 MS. BROYLES: It would be something that we'd be
14 willing to work on with the Commission.

15 COMMISSIONER CENTER: Thank you.

16 COMMISSIONER BROAD: Chuck, I have a question.

17 I'm completely puzzled by this. For about the
18 last sixty years, we've had a salary test, and it's
19 changed by the Commission every once in a while. And
20 last time, and where we left off, it was \$1,100 a month.
21 The bill merely pegs it at twice the minimum wage.

22 Now, if we pro-rate it, let's say we say that
23 somebody works 20 percent. So, we take 20 percent of
24 twice the minimum wage, and that's their salary, and then

1 they're exempt, and then the employer, because they're
2 exempt, can work them an unlimited number of hours per
3 week without overtime. It's an exception that eats up
4 the rule in its entirety.

5 MS. BROYLES: I -- Mr. Commissioner, I would --
6 I do disagree with your assessment of that.

7 Within the bill, you do have a definition that
8 it is a full-time employee at 40 hours. I don't think
9 that you get --

10 COMMISSIONER BROAD: Where is that?

11 MS. BROYLES: You're looking at Page 9 of the
12 bill, Section -- it's Section 9.

13 "Section 515 is added to the Labor Code to read:
14 . . . "For the purposes of this section "full-
15 time employment means employment in which the
16 employee is employed for 40 hours per week."

17 COMMISSIONER BROAD: Uh-huh. And then, of
18 course, that is only based on what's in 515(a), which
19 says that,

20 "The Industrial Welfare Commission may establish
21 exemptions from the requirement that an overtime
22 rate of compensation be paid pursuant to
23 Sections 510 and 511 for executive,
24 administrative, and professional employees,

1 provided that the employee is primarily engaged
2 in the duties which meet the test of the
3 exemption and the employee earns a monthly
4 salary equivalent to no less than two times the
5 state minimum wage for full-time employment."

6 MS. BROYLES: Well, you also have it followed by
7 a subsequent section, Mr. Commission, where it says,
8 "The commission may establish additional
9 exemptions to the hours of work requirement
10 under this division where it finds that hours or
11 conditions of labor may be prejudicial to the
12 health or welfare of employees in any
13 occupation, trade, or industry."

14 COMMISSIONER BROAD: Uh-huh, but not for people
15 that earn less than twice the minimum wage.

16 MS. BROYLES: I would probably suspect that that
17 is something that would probably be left to the
18 discretion of the Commission, and it would be to your --
19 it would be your decision to make. And that's why I'm
20 here advocating that change.

21 COMMISSIONER BROAD: Thank you.

22 MS. BROYLES: If I might continue, Mr. Chairman?

23 COMMISSIONER CENTER: Yes.

24 MS. BROYLES: Proposed Section 4 is the daily

1 overtime, the general provisions. We do appreciate the
2 language that has been crafted by the Commission staff.
3 I think there is -- while we think it certainly clears up
4 a problem that you have with some definitional terms
5 within AB 60, there's been a lot of discussion and
6 confusion over two separate terms, which are "seventh day
7 of the workweek" and "seventh consecutive day of work in
8 the workweek," which, as you all know, are terms with
9 substantially different meanings. We do think that the
10 language is certainly a clarification on it, although we
11 would -- there was one additional item that we do not
12 have in our written comments that I will follow up in a
13 letter to the Commission, that the words "in a single
14 workweek" be added after that so there is no problem in
15 clarity, that it would say instead -- the language -- I'm
16 sorry -- the language in here, that "Any work in excess
17 of 8 hours on the seventh day of a workweek shall be
18 compensated at no less than twice the regular rate of pay
19 of an employee." While this provides the same right to
20 the double time after 8 hours on the seventh day of the
21 workweek, it does not require that the employee worked
22 any of the first six days of the workweek, the way it's
23 currently written in AB 60.

24 So, what we do need to have put in there, in

1 Section 4(B), after the word "seventh" is the word
2 "consecutive day of work in a single workweek," would be
3 our proposed language.

4 In proposed Section 5, which is the alternative
5 workweek section of the draft interim wage order, we do
6 have some concerns about this, that in Section 5(A), that
7 you considered -- that you continue, unfortunately, a
8 policy of allowing or requiring any hour outside the
9 agreed to alternate schedule, that it must be compensated
10 at overtime rates of pay. And this is, unfortunately,
11 one of the things that we have found within AB 60, there
12 are a lot of contradictions within the language, and we
13 think that adding the ability to use make-up time, if
14 you're also on an alternate workweek schedule, when the
15 employee requests and the employer agrees to it, that you
16 would find a way that if an employee is working an
17 alternate workweek, say, of Monday through Thursday, for
18 personal reasons they end up missing Monday and wish to
19 work Friday, which is outside of the agreed to schedule,
20 without this clarity that they can use make-up time, the
21 employer would be obligated, under the language as you
22 propose it, to pay time and a half for all hours on that
23 extra day of work that they're doing the make-up time.

24 We do think that the addition of adding the term

1 -- that "At the employee's request and with the
2 employer's agreement, workers using a valid alternate
3 schedule may make up time, up to 11 hours in one day, as
4 permitted in AB 60, outside of the valid -- outside of
5 their scheduled hours may do so without the employer
6 incurring the obligation for overtime," that that is
7 using -- that basically, what that does is permit the use
8 of make-up time for those workers who are using the
9 alternate schedule.

10 And I don't think that is, in any way, something
11 that goes beyond the spirit of what AB 60 intended to do.
12 But we do feel that it has to be specifically stated.
13 Otherwise, we have found ourselves in times past, under
14 Wage Orders 1 and 4 and other wage orders that have
15 alternate schedules permitted, with the vote and
16 everything else having been conducted in a valid manner,
17 the Labor Commissioner has opined on a number of
18 occasions that any outside -- any outside hour, outside
19 that agreed to schedule, must be an overtime hour of
20 compensation. And we do want to make sure that the make-
21 up time is available to those workers.

22 COMMISSIONER DOMBROWSKI: A question.

23 MS. BROYLES: Yes, sir.

24 COMMISSIONER DOMBROWSKI: In layman's language,

1 if you're working a 4-10, Monday through Thursday --

2 MS. BROYLES: Um-hmm.

3 COMMISSIONER DOMBROWSKI: -- but you, for
4 whatever reason, can't work Monday, you want to make it
5 up on Friday.

6 MS. BROYLES: Correct, sir, same workweek.

7 COMMISSIONER DOMBROWSKI: That's what you're --

8 MS. BROYLES: Proposing.

9 COMMISSIONER DOMBROWSKI: -- asking for
10 clarification on, right?

11 MS. BROYLES: Yes, sir.

12 COMMISSIONER DOMBROWSKI: Thank you.

13 MS. BROYLES: There is one additional suggestion
14 that we do have on this section, that -- well, actually,
15 I'll -- I can mention -- or I can mention it in just a
16 moment -- is the issue of compensatory time as currently
17 permitted under the Labor Code. In proposed Section 8,
18 which is make-up time, you do have the ability for those
19 workers to make up time, at the moment, if they're not on
20 an alternate schedule that has been voted on by two
21 thirds of the employees. What we do want to make sure,
22 that -- first, that you do two things within this
23 section, is that you, one, allow that employees either to
24 use the make-up time that is provided for in AB 60, but

1 that also, in the posted wage -- the posters for the wage
2 orders, that they also notice, where permitted under the
3 Labor Code -- and that's not all of the wage orders, so -
4 - as you're aware, but that where compensatory time may
5 be permitted for employees covered by a particular order,
6 that they are notified of their ability also to accrue
7 compensatory time as well, and that compensatory time is
8 currently authorized in current state Labor Code 204.3.

9 Additionally, with the make-up time, in order to
10 reduce the paperwork burden on all concerned, there are
11 many times when you know in advance that there will be a
12 need to continue to be absent from the office for a
13 personal obligation for an ongoing period of time. In
14 the wage -- in the draft interim wage order at the
15 moment, you have, I believe, up to one month. We would
16 like to suggest that you have the ability to go, say, for
17 a semester, if you have a student -- an employee who is
18 also a student on a part-time basis, so they can give you
19 a note at the beginning of the semester that they have an
20 ongoing obligation and be able to give you one piece of
21 paper rather than have to give you subsequent pieces of
22 paper each and every month that they're in school.

23 Additionally, where you think it's permissible
24 or advisable, we would like to see the ability to be

1 electronic notification if the employer wishes to do or
2 the employee so requests.

3 COMMISSIONER DOMBROWSKI: Question.

4 MS. BROYLES: Yes, sir.

5 COMMISSIONER DOMBROWSKI: Since I don't think it
6 actually spells out how notification has to be done, it
7 seems like it would be broad enough to already been
8 interpreted that it includes electronic. So, I'm not
9 sure we have to take action on that.

10 But, second, I know we've talked about this
11 issue of the time frame, and it's at a month. And you're
12 -- you know, various people talked to various -- what is
13 -- I guess I woke up this morning and I started to
14 wonder, what's the purpose of us spelling out the exact
15 time frame anyway? What are we trying to accomplish?

16 COMMISSIONER BROAD: Well, it seems to me that
17 we have a lot of things working here, which is, one, that
18 at some point, when people are saying they're going to do
19 make-up time for the next three years, you know, they
20 should be having alternative workweek elections --

21 COMMISSIONER DOMBROWSKI: Well, nobody has
22 talked --

23 COMMISSIONER BROAD: Right, right. So, you have
24 to distinguish between make-up time and the right of

1 employees to vote on an alternative workweek schedule.
2 And the make-up time provision is really intended to be,
3 I believe, in the statute, more of an ad hoc type of
4 request. That's what the opponents of the bill were
5 asking for, you know: "What if an employee, during the
6 week, has to go to a doctor's appointment or a kid's
7 softball game and wants to make it up in the same week?"
8 By making it a month, we're kind of extending it, I
9 think, to -- for foreseeable events.

10 I'm also troubled that we're talking about kids
11 in school and we're talking about minors who are, by
12 necessity in this, would be working more than 8 hours a
13 day while they're in school, which includes high school.
14 And I'm concerned that when we start creating a schedule
15 that goes on and on and on and on like this, without it
16 falling into the alternative workweek provisions, that
17 we're creating a situation where we're going to deprive
18 those young people of free choice.

19 Having to do it once a month I don't think is an
20 extraordinary burden, especially if they can send an e-
21 mail note or just fill out a little form, which is the
22 entirety of the burden.

23 MS. BROYLES: Mr. Commissioner, if I wasn't
24 clear on that, I do mean that if I have an employee, not

1 a minor, who is an adult employee, who is returning to
2 school either to update their skills or increase their
3 viability in today's very, very competitive labor market,
4 and make themselves either more valuable to the employer
5 that they're working for or to others, I don't believe
6 that that is -- what should be viewed as an inappropriate
7 use of the make-up time. But because you do know for a
8 long time in the future -- so, would it be, then -- and
9 if I might ask this question -- would it then be
10 permissible for the employee to hand the employer six
11 notes saying that, "For the next six months -- saying
12 that for June and -- or for September, October, November,
13 December, I'm going to be in school, and here they are"?
14 I mean, that's another way that you could do it, but
15 would that be something that would match to what you
16 would require but -- what I'm requesting, actually do the
17 same thing?

18 COMMISSIONER COLEMAN: If I may comment, I
19 think, actually, the difference between this issue and
20 having the entire work unit vote for an alternative
21 workweek is because this is an individual request for a
22 special --

23 MS. BROYLES: Consideration.

24 COMMISSIONER COLEMAN: Yeah. And it wouldn't

1 make sense, it seems to me, to have the entire work unit
2 vote so that I can take off the next six months to go to
3 a class. And so, I think that's the question here, is
4 whether we want to be able to provide that additional
5 time frame in terms of flexibility, if I understand you
6 correctly.

7 MS. BROYLES: Yes, Ms. Coleman. And quite
8 frankly, the title of AB 60 also includes the words
9 "workplace flexibility." And I think this is one way
10 that, certainly, the Commission could help address that
11 need to balance the work life needs of workers and their
12 employees
13 -- and their employers, because the frustration has
14 always been that when you have the needs from outside of
15 work that are distracting the worker, or the need to pull
16 away and be away from the workplace for any period of
17 time where it might affect their pay, you have additional
18 stresses being placed on both the workers who are trying
19 either to deal with those stresses, or the employer who's
20 trying to deal with the short-term absences that can
21 disrupt the productivity of a workforce.

22 I'm going to go back one section -- I'm sorry I
23 skipped over it, but it seemed appropriate to do so at
24 the moment -- proposed Section 7, which is the collective

1 bargaining agreement section of the draft interim wage
2 order. There was some very specific language in AB 60
3 that said that as long -- so long as the collective
4 bargaining agreement provided for premium overtime rates
5 and an hourly wage rate that is at least 30 percent
6 higher than state minimum wage, that those workers
7 subject to that collective bargaining agreement are
8 exempt from the provisions of AB 60.

9 We do propose that, in order to reduce confusion
10 in the future, that the Commission at least entertain the
11 idea of putting in a specific statement that if workers
12 are to be exempt from the provisions of AB 60, then the
13 collective bargaining agreement must contain premium pay
14 provisions for all overtime hours worked as determined by
15 the collective bargaining agreements or the parties to
16 the collective bargaining agreement. And we think that
17 would be something that would significantly clarify the
18 matters for some of our members who are dealing with this
19 issue as different CBAs are being examined to see if they
20 do actually meet the requirements laid out in AB 60.

21 Excuse me.

22 In the section, the final item that we do want
23 to say, and specific to language in the proposed interim
24 draft wage order, proposed Section 9, which deals with

1 meal periods, certainly we do appreciate the language,
2 again, that has been crafted by the Industrial Welfare
3 Commission staff and do certainly endorse what it says.
4 We do feel, though, that it does need one statement or
5 one clarification. Prior to 1997 and the changes to the
6 wage orders on the overtime issue, those wage orders do
7 contain permission for on-duty lunch -- meal periods.
8 And we do want to make sure that those on-duty meal
9 periods remain permissible in the future. And a
10 statement to that effect within the wage order certainly
11 would be appreciated.

12 If you have any other questions, I believe that
13 concludes our comments here today. And I again thank you
14 on behalf of the associations that I'm representing here
15 today under the California Employers Coalition and the
16 California Chamber of Commerce for the opportunity
17 provide these comments to the Commission.

18 COMMISSIONER DOMBROWSKI: I want to -- I want to
19 go back to the pro-ration on the part-time manager. I
20 was reading -- I was reading this as an interpretation,
21 not as a new exemption. Am I missing something in that
22 regard? Because I believe it's the DLSE memo that we're
23 really talking about -- and the Commission can review
24 this.

1 From my industry's perspective, we're talking
2 about people who are working mostly 20, 25 hours.

3 MS. BROYLES: Yes, sir.

4 COMMISSIONER DOMBROWSKI: And Commissioner Broad
5 has kind of confused me, when he -- I don't understand
6 how this blows up the statute. I just -- I don't get it,
7 and I'm missing something there.

8 COMMISSIONER BROAD: Because what the final
9 result is, that the worker is exempt from overtime, which
10 means that, let's say, you schedule -- you say your
11 regularly scheduled workweek is one day, and then you
12 pro-rate it, and you say you have to meet a minimum
13 salary test of one fifth of the minimum wage. And that's
14 your test.

15 COMMISSIONER DOMBROWSKI: You're not going to be
16 a part-time manager working one day.

17 COMMISSIONER BROAD: Okay, two days, whatever,
18 20 hours a week.

19 COMMISSIONER DOMBROWSKI: All right.

20 COMMISSIONER BROAD: Then the consequence of
21 that is that you are exempt, right? You're exempt from
22 overtime, at which point the employer can assign you to
23 work an unlimited number of hours without the payment of
24 overtime, which means that the actual remuneration test,

1 for someone working 30, 40, 50, whatever hours the
2 employer wants, without overtime, is less than what the
3 statute requires. And any employer that would have any
4 brains that wants to exempt their managers would just say
5 that your regular schedule is less and then ask them to
6 work a whole bunch more hours, in which case you would
7 never even --

8 COMMISSIONER DOMBROWSKI: But when you hit the -
9 - we said 30 hours in judicial case history, 40 hours in
10 the statute -- when you hit that threshold, you get
11 kicked into the full-time manager category. You're no
12 longer a part-time manager. I don't -- how does that --
13 how do you -- it doesn't -- I don't see how it works.

14 COMMISSIONER BROAD: Well, then, what you're
15 saying is you wouldn't be exempt, if you were one of
16 these people. You couldn't work more than the number --
17 than the part-time hours you're assigned to work.

18 COMMISSIONER DOMBROWSKI: You'd still be meeting
19 the -- it does meet the salary test. The issue is the
20 salary. It's not the duties, it's the salary.

21 COMMISSIONER BROAD: Right. But once you meet
22 the test, you're exempt, and you can work an unlimited
23 number of hours without the payment of overtime.

24 COMMISSIONER DOMBROWSKI: Unlimited number of

1 hours in a day. But I don't see how you can accumulate
2 many during the week and still maintain your part-time
3 status. You're still part-time.

4 COMMISSIONER BROAD: So, what you would be
5 saying, then, somehow, is that they would -- if they
6 actually worked the overtime, they would lose the
7 exemption.

8 COMMISSIONER DOMBROWSKI: Under your scenario,
9 if they worked these unlimited hours, I guess they'd lose
10 the exemption, yeah, or they'd have to qualify -- I
11 assume they would qualify. They'd have to meet that
12 salary test. Whether they do or not, I don't know. I
13 guess we'd have to do some number-crunching to see an
14 example. But I -- I believe they'd have to make it.

15 COMMISSIONER BROAD: It's something in the area
16 of advanced mathematics, I can see that now.

17 COMMISSIONER DOMBROWSKI: I'm beginning to think
18 so too.

19 (Laughter)

20 COMMISSIONER CENTER: Thank you, Ms. Broyles.

21 MS. BROYLES: Thank you, Mr. Chairman,
22 commissioners, again.

23 COMMISSIONER CENTER: Mr. Rankin.

24 MR. RANKIN: Good morning. Tom Rankin,

1 California Labor Federation.

2 I originally was going to have very little to
3 say because, basically, we are pretty much in agreement
4 with your draft interim wage order. But I would like to
5 take the opportunity to comment on a few things, and
6 maybe add one or two things, comment on the previous
7 testimony.

8 First of all, in terms of the issue of the four
9 industries which used to be not covered by wage orders,
10 under some interpretations, but, as we all know, there
11 are lawsuits involved as to whether or not they actually
12 were covered. But the lawsuits are irrelevant. The
13 statute -- and you've heard plenty of testimony on this -
14 - the statute clearly covers these four industries. And
15 so, it's -- your proposed order is correct. And it's
16 absurd to argue that AB 60 is solely a restoration. I
17 could go through AB 60 and go through all the statutory
18 provisions that are different from what was in the wage
19 orders, but I'm not going to take your time doing that.

20 In terms of definitions, I want to support the
21 testimony of the nurses from our affiliated union, UNAC,
22 regarding the question of exemptions. But I might point
23 out that your -- the language you do have in your Section
24 3 regarding nurses doesn't totally reflect the statute

1 and could -- if you do want to do something about
2 midwives -- could cause problems.

3 It doesn't contain the language about "employed
4 to engage in the practice of nursing." That's all.

5 In terms of the question of part-time managers,
6 we didn't change anything in AB 60, as Commissioner Broad
7 stated, other than to increase the wage amount. And so,
8 I would certainly want to leave it there. I think you're
9 going beyond the law if you start playing around trying
10 to define a part-time manager -- and it, as Mr. Broad, it
11 totally opens it up to abuse. And, you know, it's never
12 been there. There's never been an exception for a part-
13 time manager, in any of the wage orders, ever since they
14 started.

15 COMMISSIONER DOMBROWSKI: The only -- the
16 reason, Tom, that I want to look at it is, quite frankly,
17 because people are -- they work 25 hours, they qualify
18 for the healthcare plan, or some portion or some
19 contribution, things like that, in my industry. So, I'm
20 not -- I'm just saying if we're uncovering a problem
21 that's developing in the employer community because of
22 this, and people are losing that status because people
23 are interpreting it that way, I think the Commission
24 needs to look at it.

1 MR. RANKIN: The problem is that they will be
2 worked endless overtime hours.

3 COMMISSIONER DOMBROWSKI: But that's -- Tom,
4 look, I'm -- I'm with you. If that's -- it there's a
5 possibility that that's going to be abused, to blow
6 through the law, we're not going to do that. That's not
7 what our -- we don't have the authority to do it, first
8 off. But what we need --

9 MR. RANKIN: Yeah. You have to -- you have to
10 remember that the wage criteria is very low to begin
11 with. Remember, we tried to make it three times the
12 minimum wage; we compromised at two times the minimum
13 wage.

14 COMMISSIONER DOMBROWSKI: Yeah. And you and I
15 have talked about that.

16 MR. RANKIN: Right.

17 COMMISSIONER DOMBROWSKI: But I guess that's
18 where I think we ended up. Let's -- I, at least -- I'm
19 going to ask the Chamber and some others -- let's come up
20 with some real-world examples of these people, and let's
21 see the numbers, and let's start trying to see what
22 happens when you -- when you do this kind of pro-ration.
23 I mean, that's the answer, instead of us dummies up here
24 sitting here kind of speculating about what happens, I

1 think, because I -- none of us know how the numbers
2 crunch out.

3 COMMISSIONER BROAD: Just speak for the two of
4 us.

5 COMMISSIONER DOMBROWSKI: The two of us.
6 (Laughter)

7 COMMISSIONER DOMBROWSKI: I'm sorry. I'm sorry.

8 COMMISSIONER CENTER: Make it three.
9 (Laughter)

10 MR. RANKIN: Okay. The next issue I might touch
11 on is the question of the make-up time. I think what you
12 put in, in terms of notice, is reasonable. You have to
13 remember that make-up time is not supposed to be -- even
14 on an individual basis, is not supposed to be a way of
15 getting around the overtime requirement. Make-up time is
16 there to accommodate the employee. But remember, the
17 employee has no absolute right to make-up time. They
18 employer can say no every time an employee requests make-
19 up time. If it were the other way around, maybe we'd
20 have a little more flexibility here. But the employer is
21 not required to give make-up time.

22 COMMISSIONER DOMBROWSKI: Okay. I'm the dummy
23 again. Under that scenario, it seems -- why wouldn't the
24 employee want to have as few -- or have to request as few

1 times as possible instead of this -- instead of more
2 times?

3 MR. RANKIN: The -- look, the statute is crafted
4 to protect employees where there's no --

5 COMMISSIONER DOMBROWSKI: Correct.

6 MR. RANKIN: -- collective bargaining agent. We
7 know what kind of pressure employers can put on
8 employees. We do not want to open up the situation where
9 an employer can go to an employee and say, "Hey, I really
10 would like you to put in a long-range request for make-up
11 time to do this because it accommodates my needs."

12 COMMISSIONER DOMBROWSKI: I agree with you that
13 that's inappropriate.

14 MR. RANKIN: And that's why we have that.

15 Hey, as I said, it's discretionary with the
16 employer. I would like to see in a statute where the
17 employee had the right to get make-up time; we didn't get
18 it.

19 COMMISSIONER BROAD: Also, Tom, the thing that's
20 also troubling is that in Labor Code Section 513, which
21 deals with this, it says, "An employee shall provide a
22 signed written request for each occasion that the
23 employee makes a request to make up work time pursuant to
24 this section." That's pretty explicit language. Now,

1 we're stretching that to a month. If we stretch it too -
2 - you know, some -- it's probably stretching it as it is.
3 I think, when we go beyond that, we're up against
4 statutory language that's pretty clear.

5 COMMISSIONER DOMBROWSKI: Well, I -- and I agree
6 with you, we can't stretch it. We are -- there are
7 parameters. But I also recall that this issue, during
8 the whole legislative process, was debated by parties,
9 and there was difficulty in coming to some agreement
10 about what it meant.

11 COMMISSIONER COLEMAN: If I can just respond as
12 well, I agree there needs to be protection -- obviously,
13 that's the whole point -- for the employees. And the way
14 that the proposed language is, it's still at the
15 employee's request. So, I think the only difference is
16 the length of time, but not --

17 MR. RANKIN: I know it's supposed to be at the
18 employee's request. I'm -- the statute's written, I
19 think, partly to protect solicited requests --

20 COMMISSIONER COLEMAN: Right.

21 MR. RANKIN: -- by employers.

22 COMMISSIONER COLEMAN: Right. And I think
23 extending it continues to do that while allowing
24 increased flexibility for the employees. I think that

1 was the --

2 MR. RANKIN: Well, I don't think it allows
3 increased flexibility. All you're talking about is
4 whether -- how often an employee has to make the request.
5 It's not a big deal, I don't believe, to put in a request
6 once a month.

7 COMMISSIONER COLEMAN: If you have a company
8 like Hewlett-Packard, with hundreds of thousands of
9 employees, that's -- what appears to be a small hurdle
10 here can actually turn out to be a larger bureaucratic
11 hurdle. So,
12 I --

13 MR. RANKIN: Well, how do they take care of sick
14 leave, which happens on a haphazard basis every week? If
15 they can take care of that, I would think they could take
16 care of these requests.

17 COMMISSIONER COLEMAN: Again, it's a minor thing
18 that I don't think violates the spirit of the law.

19 MR. RANKIN: Finally, something's come up that I
20 think has been missed in the regulations, and this is a
21 situation where workers have voted for an alternative
22 workweek, say four 10's, and then what happens when the
23 employer decides to send someone home after nine hours?
24 Does the employee get paid overtime for the ninth hour?

1 And we believe they should, and we believe that that
2 should be clarified in your proposed interim wage order.

3 The danger if it's not done is that employers
4 will encourage the adoption of alternative workweeks and
5 then they can use it as a way to cut compensation by
6 having people work less than the 10-hour day and not
7 paying them overtime. So, I think that this is something
8 that needs to be dealt with in the interim wage order, to
9 make this clear that if someone is working an alternative
10 workweek which has been legitimately voted on, and for
11 whatever reason is sent home after 9 hours on one day a
12 week or four days a week, that employee is eligible for
13 time-and-a-half pay for that one hour a day.

14 COMMISSIONER DOMBROWSKI: A question just came
15 to my mind. If -- because, again, I don't want to see
16 this -- I don't believe there's any -- there shouldn't be
17 a loophole here, as you're describing. But what happens
18 in a situation where you have a manufacturing plant,
19 you've got a four 10-hour day, and maybe -- maybe I'm
20 again going to demonstrate my ignorance -- but some
21 mechanical problem happens that day. You've got to shut
22 it down after 9 hours. Does the manufacturing plant pay
23 for the four 10's? Do they pay for 10 hours --

24 MR. RANKIN: No, they wouldn't pay 10. I'm

1 saying, for the ninth hour.

2 COMMISSIONER DOMBROWSKI: No, I'm actually -- if
3 you knew -- I don't know if you know this, Tom, so I
4 don't put you on the spot, but in a situation like that,
5 where an unforeseen physical thing happens in a plant,
6 for instance, would those salaried employees get paid
7 less that day because they went home, or would they get -
8 -

9 MR. RANKIN: They're hourly employees.

10 COMMISSIONER DOMBROWSKI: They're hourly.
11 They're -- I'm sorry -- hourly employees.

12 MR. RANKIN: If they're salaried, they probably
13 aren't covered by overtime.

14 COMMISSIONER DOMBROWSKI: If it ended -- I'm
15 sorry -- if it ended at 9 hours, the problem here, 9
16 hours, because of a -- would they get paid for 9 or would
17 they get paid for 10?

18 COMMISSIONER BROAD: I believe most employers
19 would pay them for 9, the hours -- number of hours
20 actually worked.

21 COMMISSIONER DOMBROWSKI: And in that case, your
22 problem comes up, because they should get paid overtime
23 for that one hour?

24 MR. RANKIN: Correct.

1 COMMISSIONER DOMBROWSKI: Right?

2 COMMISSIONER BROAD: I think that the problem
3 here is illustrated more by looking at the situation
4 where we, at the present time, at least, permit 12-hour
5 days. Suppose an employer holds an alternative workweek
6 election and says, "Your normal work schedule is three
7 12-hour days," and the employee -- and it's supposed to
8 be a regularly scheduled workweek of 12-hour days. And
9 what the employer -- and it's in an occupation where
10 there may be times of the week where the business flow is
11 such that some days you need the person for the full 12
12 hours, and some days you don't. And you -- that
13 employer, then, you know, sends the employee home after
14 11 hours one day, and then the next day it's after 10
15 hours, and then the next day it may be 12 hours, and then
16 the -- and it fluctuates. And, in effect, what the
17 employee is deprived of is the statutory right to have a
18 regularly scheduled workweek.

19 And I think the remedy for that is just to say
20 that if the employer deviates from the regularly
21 scheduled workweek -- workday in that workweek schedule,
22 and -- but requires the employee to work more than 8
23 hours a day but less than the schedule, that that day
24 becomes just a normal daily overtime day. And it will

1 discourage taking what is supposed to be a regularly
2 scheduled alternative workweek and turning it into some
3 kind of weird on-call process.

4 COMMISSIONER DOMBROWSKI: Right. Thanks.

5 MR. RANKIN: That's it? Thank you. Any other
6 questions?

7 COMMISSIONER CENTER: Thanks for giving us these
8 duties here. We appreciate it, Tom. You're keeping us
9 busy.

10 With that, what we'd like to do now is go into,
11 first, the industries that were not covered under
12 Industrial Welfare Commission orders -- that would be the
13 mining, logging, construction, and oil production -- then
14 go into the healthcare industry, and then go into general
15 comments.

16 So, we're looking at probably 45 minutes on the
17 non-covered industries in the past. And with the
18 concurrence of the Commission, we'll go to a 30-minute
19 break at one o'clock.

20 Is that enough, 30 minutes, for lunch, or you
21 want more?

22 COMMISSIONER BROAD: Why don't we get 30 minutes
23 at 12:30?

24 COMMISSIONER CENTER: Okay, 12:30, 30 minutes.

1 That way we have it between our fourth and fifth hour.

2 COMMISSIONER BROAD: Yeah.

3 COMMISSIONER CENTER: There we go.

4 (Laughter)

5 COMMISSIONER CENTER: With that, I'd first like
6 to bring up the construction industry and the individuals
7 that want to testify, first, on opposition to coverage
8 under overtime and still consider the exemption to apply,
9 for construction.

10 I'm getting names here, I think. And if there's
11 more than one, if you have a spokesman, what we're doing
12 is attempting to do five minutes and limit to three for
13 the non-spokesman.

14 So, you can come up and state your name.

15 MR. CLARK: Good morning. My name is Donald
16 Clark. I'm a registered civil engineer. I represent our
17 construction company, which is Clark Pacific. Our firm
18 is located in West Sacramento as well as down in southern
19 California. I'm an owner and a partner of that firm. We
20 have approximately 350 employees. We engineer,
21 manufacture, and we do on-site construction. Both of our
22 manufacturing plants, and also our on-site construction
23 crews, are under collective bargaining agreements. Our
24 firm is a member of Construction Employers Association.

1 Our firm supports the construction --
2 construction being part of the interim wage order. We
3 believe it makes sense. It's what's generally the
4 practice now in the construction industry. And we
5 believe it's also good for the worker, as well as, we
6 feel, it keeps the playing field level for us, for our
7 firms that are part of collective bargaining agreements.

8 I think it's good for the worker, number one,
9 for safety, is that we believe that long hours --
10 construction is tough work, and long hours in the
11 construction industry has an effect on safety. Safety is
12 a primary concern to our firm and to the majority of
13 construction firms. Working over an 8-hour day in any
14 one-day period starts to have an effect. And I believe,
15 you know, this interim wage order provides a financial
16 disincentive for firms to work over 8 hours unless they
17 have to.

18 I would think it's also fair. Construction is
19 hard work. And we believe that our workers in our
20 manufacturing facilities, as well as in on-site
21 construction, should be paid over -- you know, overtime
22 for work over 8 hours in a day.

23 Also, I think it's fair because our manufacture
24 -- we produce what's called architectural pre-cast

1 concrete panels, which go on the outside of buildings.
2 It's -- the Attorney General's building here in
3 Sacramento, as well as the Shriner's Hospital, have our
4 product on it. And the workers in our manufacturing
5 facility, they drive equipment, they pour concrete, they
6 tie rebar, they do all the same types of work that our
7 workers out at the job site do. It doesn't seem right
8 that our workers in the plant would have to follow -- you
9 know, we follow one rule with them, and then, for some
10 reason, it wouldn't be -- you know, the workers out on
11 the job sites don't fall under the same state rules.

12 You know, we, just again, just believe -- you
13 know, our firm supports that construction is part of the
14 interim wage order.

15 Thank you.

16 COMMISSIONER CENTER: Thank you.

17 Any questions?

18 (No response)

19 COMMISSIONER CENTER: Thank you.

20 MR. CLARK: Thanks, Chuck.

21 COMMISSIONER CENTER: Anybody -- I have cards
22 here. Anybody that opposes construction being covered in
23 the interim wage order, from the construction industry?

24 I've got to start going through names, then.

1 And why don't you --

2 How about Patricia Gates, Scott Wetch, Jamie
3 Khan, Tom Cadell?

4 MR. WETCH: Hi. I'm Scott Wetch. I'm here
5 today representing the State Building and Construction
6 Trades Council on behalf of the more than 300,000 men and
7 women employed within the construction trades in
8 California.

9 First, I'd just like to spend a moment
10 dispelling this argument that somehow, the construction
11 industry, along with logging, mining, and drilling, is
12 not covered under AB 60. The court cases that were
13 mentioned earlier by the representative of the Chamber of
14 Commerce, I think it's important to note, are two
15 decisions that were -- one unpublished, one published --
16 that were both issued prior to the enactment date of AB
17 60. As you know, AB 60 expressly covered all employees
18 in the State of California under the 8-hour day, with the
19 exception of those very few industries that were
20 expressly exempted. And it also granted this Commission
21 the authority to grandfather in those industries -- those
22 exemptions that were contained in pre-1998 valid wage
23 orders. And I think, as this Commission is aware of,
24 nowhere in either AB 60 or in those pre-'98 wage orders

1 is there an exemption for construction, logging, mining,
2 or drilling.

3 In addition, I think it would be fair to -- it
4 would be fair to say, for those of us that participated
5 in the AB 60 discussions in the Legislature, that the
6 Legislature, through a very lengthy and deliberative
7 process, considered what exemptions to expressly place in
8 AB 60. And through those deliberations, they chose not
9 to include construction, mining, logging, or drilling.

10 So, having said that, the State Building and
11 Construction Trades Council is in concurrence with the
12 Commission in the interim wage order, with a few
13 suggestions for inclusion in either the interim wage
14 order or, certainly, in the wage boards.

15 Under the definition of construction, we believe
16 that the -- it's incomplete, in that remodel, renovation,
17 and improvement, as defined in the Business and
18 Professions Code Section -- I believe it's Division
19 Three, Chapter 9, beginning with Section 7025 -- should
20 be contained within the definition of construction.

21 Two other issues that we have that we'd like to
22 see addressed, if not in the interim wage order, through
23 the wage boards, is the election for the alternative
24 workweek. Given that in the construction industry, there

1 is a very fluid fluctuation of employee levels for any
2 particular project or under any particular contractor, we
3 believe, presents an opportunity for the unscrupulous
4 employer to try to circumvent the rights of the employees
5 to have a fair election. And what our concern is, that
6 an employer will bring in their core employees, those
7 employees that they, for the most part, keep on the
8 payroll week in and week out, month in and month out, and
9 hold an election that would then be binding upon the
10 larger employee group that would be brought in to do the
11 rest of the job. So, you may have ten or fifteen core
12 employees conducting the election. By the peak employee
13 point in that particular project, you may be up to two or
14 three hundred employees.

15 So, we believe that there needs to be some
16 language regarding the peak workforce to ensure that when
17 the election is conducted, that it is done so with the
18 substantial and regular complement of employees.

19 In addition, we have some concern regarding the
20 transitory nature of the construction industry, in that
21 an employer may be working on one project one week with a
22 hundred employees, be on another project just another
23 week down the road with a completely different set of
24 employees, and I believe that that's an issue that needs

1 to be addressed so that, under the language of AB 60,
2 that all affected employees have a voice and have an
3 opportunity to vote on their alternative workweek.

4 Lastly, I would request that the posting order,
5 on the interim order and any subsequent construction wage
6 order, that you require that rather than it just be
7 posted adjacent to the existing wage orders, that it be
8 posted in an area that is frequented and easily
9 accessible to employees, because, in our industry, on a
10 job site, it's not like you just walk into a lunchroom,
11 and there you have the postings of the wage orders. It
12 needs to be a place where the employees are -- frequent
13 toolboxes, you know, the restroom facilities and such,
14 that they can easily access.

15 Yes?

16 COMMISSIONER CENTER: That's in the new proposed
17 amended orders.

18 MR. WETCH: Okay. I'm sorry. I didn't see
19 that.

20 With that, we thank the Commission and look
21 forward to working in the wage board process with you.

22 COMMISSIONER CENTER: Thank you.

23 Ms. Gates?

24 MS. GATES: Yes. My name is Patricia Gates, and

1 I'm an attorney with the law offices of Victor Van Bourg,
2 Van Bourg, Weinberg, Roger and Rosenfeld. Our office
3 represents tens of thousands of construction workers and
4 apprentices. We also represent workers in areas
5 regulated by the Industrial Welfare Commission in other
6 industries.

7 I'm here today to testify in favor of
8 implementation of AB 60 by way of the interim wage order.
9 I concur in the amendments offered just now by Scott
10 Wetch of the State Building Trades. But I'm also here
11 for another reason today, and that is to attempt to
12 gradually shift both the philosophy and the work of this
13 Commission from constantly looking at what employers want
14 and what employers need and to instead look at what this
15 Commission is charged by the Legislature to protect, and
16 that is the welfare of working people.

17 Driving up here today -- and you'll probably be
18 sorry to hear I had a long drive -- I had time to think
19 about what I wanted to say. I've prepared a written
20 testimony that I'll give to all of you, and I also
21 brought some materials that I think will help in shifting
22 the concern of this Commission to that of working people.

23 But in driving up, I started to think about my
24 boss, my boss who died recently, Victor Van Bourg, and

1 what he might have said had he been here. And rather
2 than following that to its logical conclusion, that I
3 could never be so eloquent, I distracted myself by
4 remembering something that a union member said at
5 Victor's funeral and memorial service. And what he said
6 about Victor is that he woke up every day and said to
7 himself, "What can I do today to make the conditions for
8 working people better?" And that's how he lived his
9 life.

10 And the parallel that I see is the parallel that
11 this Commission has that same charge and that same duty.
12 Your duty is to improve the lives of working people. The
13 duty is set out in statute. The duty is also set out in
14 case law, in Supreme Court interpretation.

15 Right now, your jobs have been busy with
16 implementing AB 60. And because of that, I think you've
17 had to look much more at what the industries and what
18 California businesses want from you. And this board is
19 made up of representatives of business and labor. But
20 the real work of this board is creating a floor of rights
21 underneath all California workers, and raising that floor
22 so that California workers can share in the economic
23 prosperity that this state and our country is enjoying
24 right now.

1 In the 1970's, the Industrial Welfare Commission
2 orders were largely ignored because they were enjoined.
3 Employers went to court and enjoined the enforcement. In
4 1980, I was working for the Department of Industrial
5 Relations on the day that the decision, the Industrial
6 Welfare Commission decision, was decided, finally
7 releasing those orders from court injunction and allowing
8 basic wage and hour law to live in California. It was a
9 day of great optimism.

10 And then came the '90's. And during the 1990's,
11 this Commission was charged with looking out -- really
12 lost its way and began looking out for the -- for what
13 was best for industry and business. It gave unilateral -
14 - it gave unilateral power to the employer to order
15 workers to work 10-hour days without overtime.

16 What I'd like to ask this Commission to do is to
17 charge each of your wage boards, when you send the small
18 issues that you can't deal with in this large forum and
19 issues that are best dealt with in -- by way of wage
20 orders, to charge those wage boards with the
21 responsibility to ask themselves that same question:
22 "Will this change, will this amendment, will this request
23 being made of me by this employer group, will this
24 advance the interests of working people?," because that

1 is fundamentally the job of this Commission.

2 Thank you.

3 COMMISSIONER CENTER: Thank you.

4 Jamie Khan, Warren Mendel.

5 MS. KHAN: Phil's wondering why he's not being
6 called.

7 COMMISSIONER CENTER: Oh. Phil too, if he's
8 here -- Vermeulen.

9 Go ahead, Jamie.

10 MS. KHAN: Hi. Jamie Khan, representing the
11 Associated General Contractors here.

12 My comments are brief. We have reviewed the
13 interim wage order. We believe that it reflects the
14 provisions of AB 60, and we believe that we're covered by
15 AB 60, and will abide by them. We do, however, would
16 like -- or strongly urge the Commission to initiate wage
17 boards so that the particular nuances to construction can
18 be considered and wage order developed that is specific
19 to construction.

20 And that's all my comments.

21 COMMISSIONER CENTER: Thank you.

22 MR. MENDEL: Warren Mendel, representing the
23 Southern California Contractors Association. And I
24 reflect what my good friend Jamie has said.

1 One little thing bothers me, though, and I
2 understand it. But employers do a little work
3 themselves, so I don't like to see them excluded
4 completely when somebody's talking about somebody
5 working.

6 That's a joke.

7 (Laughter)

8 MR. MENDEL: The thing that concerned us most in
9 viewing these orders is the uniqueness that's in
10 construction. We don't have a fixed place of work. We
11 don't have a fixed set of circumstances under which we
12 work. And so, there has to be considerable flexibility
13 in terms of controls over management of a construction
14 company.

15 It so happens that this association requires
16 participation in the master labor agreements to be a
17 member of the association. So, we are extremely
18 concerned that all the provisions that have been
19 bargained into those agreements can remain in effect, and
20 would hope that the flexibility of any changes that come
21 up could be settled in negotiations between the craft
22 unions and our association.

23 Thank you, Mr. Center.

24 COMMISSIONER CENTER: Thank you.

1 MR. VERMEULEN: Mr. Chair, members, Phil
2 Vermeulen, representing the Engineering Contractors
3 Association, Fence Contractors, Sacramento and Marin
4 Builders Exchanges, and the Flasher Barricade
5 Association.

6 Following up with my colleagues, we too agree
7 that AB 60 embraces the construction industry, and we
8 urge going ahead with the adoption of the interim wage
9 order. Having said that, we strongly urge that wage
10 boards for the construction industry be held as
11 expeditiously as possible.

12 Our concerns are many, such as, in the Wage
13 Order Number 4, 68-degree temperatures in restrooms, on
14 Porta-Potties on a construction site just don't work.
15 You can see that those kinds of things are nuances in the
16 construction industry which, obviously, we have to
17 address.

18 So, I would urge you to go ahead and create a
19 construction wage board as quickly as possible.

20 With that, thank you very much.

21 COMMISSIONER CENTER: Thank you.

22 I have Alan Smith and Eric Carleson and Tom
23 Cadell.

24 MR. SMITH: Good afternoon. My name is Alan

1 Smith. I'm a member of the NPC, which is the National
2 Plasterers Council. This is George Oliveira; he's the
3 chairman. We are basically an association of swimming
4 pool plasterers in the state -- actually national, but
5 this is the state representation here.

6 We have a unique, I believe, on-site
7 construction industry, for we are really tempered so much
8 by the weather and changing conditions on a daily basis.
9 Traditionally, we are a piecework -- for the last fifty
10 years, we pay by the pool we plaster, for instance, say,
11 \$100 per finisher per pool. We traditionally do two
12 pools a day.

13 The problems we've run into this first month
14 already has been in such where we have a very cool and
15 damp day and it takes maybe six or seven hours to plaster
16 one pool. The next day is rather warm; the gentlemen can
17 do two pools in a day, maybe in six hours. We are losing
18 the flexibility in the fact that when we have two pools
19 to plaster and we think it's going to take more than 8
20 hours, we simply don't send the crews out because we --
21 for a second job because we can't pay the overtime. It
22 might run into 9, 10, 11 hours to do the second job. And
23 the profit margins are minimal; it may be two or three
24 hundred dollars per job. And if you have an eight-man

1 crew with two hours of overtime, or possibly three, we
2 can't send them out because it basically gobbles up our
3 profit on that particular job.

4 On a 40-hour schedule, we can do it day by day.
5 We can get all the work done, and then, at the end of the
6 week, we can analyze it and see, you know, how much work
7 can be done on that Friday. But still, they're getting
8 more work. For instance, the first three weeks of this
9 month, my finishers have taken a 30 percent decrease we
10 are not able to pay the overtime based on just not
11 knowing when we can send these crews out. And that's
12 very difficult for them. Especially a lot of them have,
13 you know, mortgages and such, like everybody else does.
14 With the flexibility of a 40-hour week for us, we would
15 not have that situation.

16 We are basically external cement finishing.
17 It's warm in the morning, the clouds come over, it cools
18 off, and all of a sudden, what might have been a 7-hour
19 day, the gentlemen make \$200, turns into a 12-hour day.
20 We have no control. It's very, very difficult.

21 We also are a very seasonal business, whereas we
22 have representatives here from different parts of the
23 state where they might be sitting for three or four
24 months in rain and wind conditions, not doing maybe more

1 than 10 hours of work a week because of those conditions.
2 And then, when the sun comes out for six months, they
3 have to make the hay, as they say, when the sun shines.
4 And they are limited to 40 hours, which is difficult, at
5 best, anyways. But now, with this 8-hour restriction, it
6 is very, very confining for us.

7 That's really all I have to say. I just would
8 like to see if there can be some type of an exemption for
9 external cement finishing like this, especially when we
10 have no control over that. We're not looking to abuse
11 anything. We're just trying to get these guys to get
12 their amount of work in in the week. In the summer -- or
13 through the year, we're averaging 35 to 40 hours a week
14 for ten pools per crew. My guys are making anywheres
15 from \$35,000 for up-front coming-in guys to \$70,000 a
16 year for journeymen. This is going to cut that 20, 30
17 percent through the year, from what I see.

18 COMMISSIONER CENTER: Thank you.

19 Any questions?

20 MR. SMITH: I'd invite some comments and help on
21 this. My guys asked me, basically, "Why did they do
22 this?" Nobody was unhappy, as far as the employee. They
23 were very excited about the way we'd been doing things
24 for years. Never a complaint. Employee, management --

1 we always get along great on this. And they are very
2 perplexed right now. And they said please -- they said,
3 "Find some answers."

4 I called some Assemblymen offices to try to get
5 some resolution on this, and I got a bunch of different
6 answers on it. One of them said, "You have to take the
7 good with the bad." And I asked them, "What is the good
8 in my instance?" And I said, "I have to go back and tell
9 my employees something. Some of them have already put
10 their wives to work, when they wanted to stay at home to
11 take care of their families. That has happened already.
12 And I have to have a little bit more than a flippant
13 answer like that to them." And they said, "We need
14 something next week, not July or something," because this
15 is immediately affecting their paychecks.

16 So, any help is appreciated.

17 COMMISSIONER BROAD: I just had a question,
18 whether you've explored the possibility of alternative
19 workweeks in your industry.

20 MR. SMITH: Yes, we have. That would still
21 limit us to probably eight pools a week, rather than the
22 normal ten they get. So, that's a 20 percent decrease
23 still.

24 If we have the flexibility, we can do two pools

1 a day -- at least ten, nine to ten a week. That's
2 traditional in our industry. Sometimes when it's really
3 warm, the crew will do three pools in a day and then
4 piecework under 8 hours. They'll make \$300 to \$400 a
5 day. They're very excited about that.

6 So, it takes away all their flexibility. It's
7 just gone. And so, right now we're at a loss, because we
8 can't bid the jobs for overtime because you never know
9 what that day is going to bring, as far as weather, the
10 ground temperatures, moistures. You might sell the job
11 in February and end up doing the job installation in
12 July. So, it's very, very difficult right now.

13 One contractor in L.A. who has fourteen crews
14 stopped them all to one pool a day rather than two,
15 because he just can't manage that, watching constant
16 overtime on a daily basis.

17 So, nobody knows why it was implemented in our
18 industry when it's been going so well for so many years.
19 And everybody's fat, dumb, and happy. And now it's just
20 -- boom, arbitrarily, put an 8-hour time frame on
21 something, and it's hurting everybody immediately in our
22 industry, probably 400 companies in California. And we
23 want to know if there was any thought put into this
24 beforehand as far as our industry is concerned, because

1 we have a lot of people that are a little on the scared
2 side, as far as the employees. It's hurting the
3 employees way more than it is the employees at this part,
4 because we're backlogging our work and they're the ones
5 really taking the brunt. We'd love to work it out for
6 them somehow.

7 Any suggestions on our part, what we could do,
8 besides maybe an exemption?

9 COMMISSIONER CENTER: And that could not be done
10 until we have wage boards anyway. What happened is the
11 law changed in January, where all workers in California
12 are covered now. And that was not in the statute prior
13 to January 1st.

14 MR. SMITH: Never has been in statute.

15 COMMISSIONER CENTER: Yeah.

16 MR. OLIVEIRA: We rely on the weather man. And
17 as you know, his guess is as good as ours. We had rain
18 on Tuesday, so our crews stayed home. My crew is doing
19 two pools today so they don't have to work tomorrow. And
20 I'm praying to God they get them done in 8 hours,
21 because, if not, no profit. They would much rather work
22 a longer day than work a Saturday.

23 All that flexibility is gone. So, we're hoping
24 you guys can work with us here.

1 COMMISSIONER CENTER: Thank you.

2 MR. OLIVEIRA: Thank you.

3 MR. CARLESON: Hello. My name is Eric Carleson,
4 representing the California Spa and Pool Industry
5 Education Council. Chairman Center, commissioners, my
6 remarks will be brief. We represent the swimming pool
7 and spa industry in all areas in California, including
8 construction. But we are here today in support of this
9 request for exemption and/or assistance for this
10 particular subsector of the construction industry and the
11 pool industry, and for others that we're already starting
12 to hear from.

13 In fact, as you convene your wage boards and
14 pursue a wage order, I'm sure that we'll be able to
15 gather more information from some of the other
16 construction subtrades in our industry because it is of
17 concern to them. We did attempt, at least, to make some
18 suggestions during last year that this might be what our
19 industry would be looking at, and as you can see, they
20 are looking at it now.

21 So, we just want to make sure that we evidenced
22 our support of the plasterers and indicate that we'll be
23 working with you in the near future.

24 COMMISSIONER CENTER: But, Eric, do you agree

1 that in order for the Commission to do any action, they
2 have to convene wage boards?

3 MR. CARLESON: That the Commission itself
4 should --

5 COMMISSIONER CENTER: Yes. If they do anything,
6 they have to convene wage boards in these industries?

7 MR. CARLESON: Well, I would say that, at this
8 time, we're receiving all of the information that's being
9 presented in the process. And in either -- in either
10 setting, whether or not it's a matter of asking for
11 exemptions within the wage orders or whether or not the
12 Commission is properly already in the position to
13 regulate under AB 60, we would still be seeking the
14 relief.

15 COMMISSIONER CENTER: Thank you.

16 MR. CARLESON: Um-hmm.

17 MR. SMITH: Because, actually, my guys would
18 like a change Monday, because it's their check next week
19 and a lot of them have mortgages. And they're still
20 going to ask me what happened and why, and what you're
21 going to do. And I really would like to know, because
22 I've called and asked. And I have really got a
23 runaround. I mean, I'm not -- I'm just really trying to
24 get to the bottom of what's happening to our industry.

1 And I have real answers by real people with real problems
2 this is affecting, and I just can't go back and say, "We
3 have to wait and see."

4 COMMISSIONER CENTER: Well, we have legal
5 authority to do things, as our counsel from the Attorney
6 General's office advises. And also, the testimony from
7 the Chamber of Commerce, which I'm sure you're a member
8 of, believes that to make any changes for exemptions,
9 wage boards would have to be concluded before we could
10 act on it. So, Monday is not --

11 MR. SMITH: I know, but I was just saying, on
12 behalf of their wishes.

13 COMMISSIONER CENTER: Tuesday's going to be
14 tough too.

15 (Laughter)

16 MR. SMITH: They can hear that. Thank you.

17 COMMISSIONER BOSCO: Could I make a comment?

18 COMMISSIONER CENTER: Go ahead, Doug.

19 COMMISSIONER BOSCO: I just joined the
20 Commission today, so I'm purposely keeping my mouth shut
21 so I don't make some major blunder. But I would like to
22 say that I don't think the fact that wage boards have to
23 be convened precludes you from presenting your case. I,
24 for one, am very sympathetic to working people that are

1 in the type of situation that your people are, and the
2 young lady from the law firm right before you, commenting
3 on helping working people. And I think certainly that's
4 my interest in being on the Commission.

5 So, I think, if you need to go back with
6 something, it would be that at least one person is
7 sympathetic with you, and I'll be happy to track this as
8 we go through our procedures. But as the chairman said,
9 we don't have any authority to circumvent the law. We
10 have to go within our own bounds. But that doesn't mean
11 that some of us aren't at least sympathetic with your
12 situation.

13 MR. SMITH: Well, I appreciate it. Thank you.

14 COMMISSIONER CENTER: Thank you, Mr. Bosco.

15 COMMISSIONER BOSCO: Thank you.

16 COMMISSIONER CENTER: Thank you.

17 I'd like to take now the oil production industry
18 -- oil drilling industry. Excuse me.

19 I have Robert Tollen. And is John Zaimes here
20 for the oil too? Or --

21 MR. ZAIMES: No.

22 COMMISSIONER CENTER: Okay. That's a different
23 issue, then.

24 MR. TOLLEN: Thank you. I am representing the

1 California Independent Petroleum Association, the
2 Association of Energy Service Companies, and the
3 Independent Oil Producers Agency.

4 We agree with the Chamber of Commerce that AB 60
5 does not give the Commission authority to cover the four
6 industries that were not previously covered, that you
7 can't restore something that wasn't there in the first
8 place, and that the words, quote, "any work," close
9 quote, don't put a legislator on notice as to what the
10 bill is doing. The legislative counsel's analysis did
11 not do that either. But we understand that the
12 Commission has been advised by its own attorneys to the
13 contrary. We think that's the direction we're going, and
14 we don't propose to make an issue of that issue at this
15 time.

16 And we think that the Commission has the
17 authority to regulate those four industries anyway. It's
18 always had the authority to regulate those four
19 industries under the existing provisions of the Labor
20 Code. So, we would like to see a wage board convened --
21 a wage board appointed and a wage board convened to do
22 precisely that. And what we request that it do is cover
23 occupations involving the on-site exploration and
24 drilling of oil and gas, both offshore and onshore, and

1 the offshore extraction of oil and gas.

2 I said "occupations" rather than industry
3 because, as we have struggled with how to define this, it
4 appears that it is easier to define if you talk in terms
5 of occupations than if you talk in terms of whole
6 industries. And we don't -- we don't think that this
7 wage board should impose on onshore extraction activities
8 that have been -- that have been treated as covered for
9 many years under either Order Number 1 or Order Number 4.

10 So, we're trying to define the offshore
11 activities in totality and the onshore exploration and
12 drilling activities. We propose that the wage board
13 specifically should not cover, because it's not really
14 involved in what we're talking about, manufacturing,
15 refining, or distribution of oil and gas.

16 And our only wish, and the point we want to
17 stress at this point, is that the Commission, the IWC,
18 should appoint this wage board to start quickly. We
19 think it will be a long process. You're going to have to
20 go through the process of appointing people to the wage
21 board, deciding on the number of people on the wage
22 board, convening it. They're going to have to have
23 meetings, make recommendations, report back to the
24 Commission. And that's going to take a lot of time. So,

1 our wish is that you act today to authorize the
2 appointment of a wage commission and start the ball
3 rolling.

4 COMMISSIONER CENTER: Thank you.

5 Anybody from the oil production and drilling
6 industries?

7 (No response)

8 COMMISSIONER CENTER: Then we have the logging
9 industry. Ed Ehlers and Mark Vegh.

10 MR. EHLERS: Members of the Commission, I'm Ed
11 Ehlers, executive director of Associated California
12 Loggers. We're an association of family-owned logging
13 and log trucking businesses. I've filed a letter with
14 you yesterday that's available, so I won't repeat that.

15 We're primarily small businesses, or exclusively
16 small businesses. Most have fifteen or fewer employees.
17 We're very weather-dependent. One of our major problems
18 in our end of the industry is maintaining good crews and
19 whatnot. I guess I -- and we've operated for years
20 without a wage order.

21 We think, in looking at this, that we probably
22 fit better under the agricultural occupations wage order
23 rather than the interim one which you propose. And if
24 you look at the definitions in 14-80, Section 2(c), 4,

1 and 7. Those, you know, pretty well fit us without too
2 much trouble. And so, we would request that the
3 Commission take some action, minutes or whatever, to
4 recognize that we're part of that wage order.

5 COMMISSIONER CENTER: Thank you. I think it's
6 the position of the chair that to do that, we still need
7 to convene a wage board for your industry. Is it -- this
8 is your position, we need to also talk to the affected
9 employees in your industry?

10 MR. EHLERS: Um-hmm.

11 COMMISSIONER CENTER: And then, if we have
12 compelling evidence, that might be a possibility for the
13 Commission to act on. But I don't think we have the
14 authority today to act on that, without conducting wage
15 boards in your industry.

16 MR. EHLERS: Okay. Thank you.

17 COMMISSIONER CENTER: Thank you.

18 Mark Vegh.

19 MR. VEGH: Good afternoon. I'm Mark Vegh, with
20 TOC Management Services, a multi-employer association
21 primarily dealing with wood products. And just very,
22 very briefly, I will echo what Mr. Ehlers said about --
23 and the others -- about convening wage boards for logging
24 as well as those other occupations in construction and

1 mining and drilling.

2 A couple other things. I also faxed over two
3 pages of comments yesterday to the Commission. I also
4 want to echo what Ms. Broyles said earlier this morning
5 about adding additional words to the part in Section 4
6 dealing with the seventh consecutive day of work, just to
7 clarify that that would be in any one workweek.

8 One additional comment that I had in my letter
9 which I don't think has been raised is -- deals with
10 Section 5(G) of the interim wage order, Page 4. The
11 language has been added there -- this deals with the --
12 certain alternate work schedules that were in place by
13 July 1st of 1999, so they weren't voted upon pre-'98.
14 But this is the other part of AB 60, dealing with current
15 -- with last year's alternate work schedules. If they
16 were in place by July, 1999, the individual employee
17 could agree with the employer to continue those.

18 In the interim wage order, the term "individual
19 agreement" is used. Specifically, it says that the --
20 requires that this alternate work schedule be pursuant to
21 an individual agreement made after January 1st, 1998,
22 between the employee and employer. And I think that the
23 term "individual agreement" is confusing and troublesome
24 in this context. AB 60 doesn't include that language in

1 it. It says simply that the employee has been
2 voluntarily working an alternate work schedule prior to
3 July of 1999.

4 So, the question that I raise is, what would
5 qualify for an individual agreement? If an employee was
6 working four 10's -- say that that schedule occurred the
7 first part of 1998, for example -- there would have been
8 no need to have an election at that time. So, what would
9 constitute an individual agreement to do that? Is it
10 simply -- is it simply implied because the employee
11 continues to choose to be employed and work that
12 schedule, or is there something additional that the wage
13 order is contemplating here?

14 And my recommendation would be to not confuse
15 the matter with that term or to clarify it, to state that
16 it's not requiring anything in writing or anything
17 formal, any type of formal agreement, between the
18 employee and employer prior to July of 1999.

19 Those were all of my comments, in my letter.

20 I would like to say, briefly, one other thing by
21 way of rebuttal to what Mr. Rankin, I believe, said, with
22 the California Labor Federation, earlier. He made the
23 point that if somebody was on an alternate work schedule
24 of four 10's, for example, and worked a 9-hour day, that

1 that last hour, the eighth and ninth -- between the
2 eighth and ninth hour, should be overtime. I think that
3 -- a couple of points on that.

4 First of all, I believe there was some
5 discussion at that time over some practical problems with
6 that, if it was beyond the employer's control, for
7 example, and they had to send employees home early after
8 9 hours. Also, that would be very, very rigid, and
9 employees would be much less likely to have the
10 opportunity to work that type of schedule, which most
11 employees, in my experience, enjoy, when they have the
12 opportunity to have a three-day weekend. So, if an
13 employer was strictly held to that, if for some reason
14 one time they had to send people home after the ninth
15 hour or change that schedule for one day, they would be
16 likely not to ever propose an alternate work schedule.

17 The other thing, which is more statutory, as I
18 looked at Section 511(b) of the Labor Code, brought in by
19 AB 60, it specifically talks about overtime -- this is
20 the alternate work schedule section -- it talks about
21 overtime being required for work in excess of regularly
22 scheduled hours under the alternate work schedule. So, I
23 don't believe -- I think that that interpretation of his
24 would be contrary to the Labor Code, contrary to AB 60,

1 in that provision.

2 Those are my comments. I'd be glad to clarify
3 anything.

4 COMMISSIONER CENTER: Thank you.

5 MR. VEGH: Thank you.

6 COMMISSIONER CENTER: What we'll do is take Mr.
7 Holober, then we'll break for a 30-minute lunch break if
8 that's -- is 30 minutes enough for the -- yeah. Then
9 we'll go into healthcare industry after the break.

10 MR. HOLOBER: Thank you very much. I appreciate
11 your letting me speak at this time. My name is Richard
12 Holober. For those who know me, I am now with the
13 California Nurses Association, as of the first of the
14 year, previously with the California Labor Federation.

15 I want to welcome our newest commissioner.

16 COMMISSIONER CENTER: Watch the watch, too.

17 MR. HOLOBER: I will be quick.

18 But since I was intimately involved in the
19 design of AB 60, I did have a few comments about the
20 interim regulations and one -- just a couple of brief
21 comments about points that were discussed in terms of
22 make-up time and the one-week, four-week, or lengthier
23 periods of time for an individual request.

24 The history on this is, the bill is really

1 clear. It says "each time," you need a note. There was
2 a letter in the *Journal* that Assemblyman Knox put in the
3 *Journal* to accommodate a request from Senator
4 Vasconcellos, who said, "Well, you know, let's be
5 reasonable, folks. What if somebody wants to do it a
6 couple of weeks? They have to do it each time." So,
7 there's a letter in the *Journal* that says up to four
8 weeks can be covered by a single written request. So, in
9 case somebody comes and sues the IWC, that would be your
10 paper trail. That would allow you to do this, but no
11 more. More than that, I think, would not be permitted
12 under the law.

13 On the part-time question, I know it's been
14 addressed, but I think there's a serious problem that
15 affects all industries. If an employer can define
16 someone who's working less than full time as a manager,
17 and then decide, you know, "Even though you're scheduled
18 to work 15 or 20 hours, you're going to work 80 or 100
19 hours," it totally destroys the intent of AB 60, which
20 was to say, "You have to at least -- you know, earn at
21 least the princely sum of about \$1,900 a month before you
22 can be worked 70, 80 hours, without overtime." So, I do
23 think the law on this is clear and there's really no room
24 to allow for a part-time manager to then be worked 80

1 hours a week, unless they're making the equivalent of
2 about \$1,900 a month.

3 COMMISSIONER DOMBROWSKI: I agree with you that
4 a part-time manager cannot work 80 hours a week.

5 MR. HOLOBER: Okay. And the bill makes it
6 pretty clear.

7 The major issue I wanted to talk about is this,
8 and it's a follow-up on the point that Tom Rankin made.
9 What we don't want is for an employer to say, "You're
10 going to have an alternative work schedule of 10," or, in
11 the hospital industry, "12 hours, but I can kind of
12 switch it on a whim from one day to the next, so one day
13 you work 12, the next day we send you home after 9 or
14 after 10 if the patient census is a little low in a
15 hospital, and tough luck; you're not getting paid for
16 those hours." Is this happening? Yes, it is happening.
17 And I just wanted -- I did send copies of this, but I
18 want to, if I may, give you copies of --

19 COMMISSIONER CENTER: Thank you.

20 MR. HOLOBER: -- and this is a flexible work
21 arrangement agreement at San Ramon Valley Medical Center
22 in Contra Costa County, owned by Tennant Corporation,
23 which is a \$9-billion hospital corporation, that
24 employees were asked to sign in December of last year.

1 Actually, it goes back to 1994, but they were all asked
2 to sign it in December.

3 And basically, what this says is, "Your workday
4 is any number of hours up to 12, and the employer can
5 change those hours whenever the employer wants to." That
6 is not a regularly scheduled alternative workweek. The
7 two words, "regularly scheduled," are key here. If an
8 employer proposes an alternative work schedule, they have
9 to spell out what those hours are, and not simply allow a
10 blanket opportunity to work you up to 12 or less than 12
11 any day. That -- by -- I think this is illegal, but I
12 think the IWC should close that potential loophole by
13 saying that if you agree to a regularly scheduled
14 alternative workweek, up to 10 in any industry, or up to
15 12, for the next six months, in hospitals, that you will
16 be worked those hours, and if the employer is using this
17 as a way to increase or decrease hours based upon, you
18 know, in the case of hospitals, the patient census, that
19 you're paid overtime after 8 for those days on which
20 you're sent home early.

21 What happens in a lot of hospitals is you're
22 docked pay and then you are -- that pay comes out of your
23 vacation pay. So, your paycheck ends up being a complete
24 paycheck, but you're taking that money out of your own

1 entitlement to vacation pay.

2 So, I hope you will address that with language
3 that says -- makes it really clear what "regularly
4 scheduled" means, which is not a blank check for the
5 employer to switch people's schedules on a daily basis.
6 And the language in the interim wage order that is the
7 specific language to the hospital industry should
8 basically mirror the language for the 10-hour
9 alternative. It does not address a couple of issues,
10 such as the right of employees to vote -- to petition and
11 vote to repeal that alternative workweek. It does not
12 say that no one shall have their hours -- their pay
13 reduced as a result of the nullification or repeal. It
14 also does not make it clear that if you vote for
15 something other than a 12-hour day, that you receive time
16 and a half up to 12 hours and double time after 12.

17 So, I would recommend you just take the language
18 that is in the section that deals with the 10-hour
19 alternative workweek, which makes it clear for hours
20 beyond the regularly scheduled alternative work schedule,
21 you get time and a half up to 12 and double time after
22 12, that should be reflected in the healthcare section as
23 well, as well as the right to repeal and the fact that no
24 one should suffer a reduction in their hourly pay if

1 there's a nullification or repeal.

2 Those are -- those are my comments. I
3 appreciate the opportunity.

4 COMMISSIONER BOSCO: I had a question. Since
5 you were involved in the legislative process on AB 60,
6 did the Legislature consider the question of working
7 people who might be forced to work below the regularly
8 scheduled workweek? Did that ever come up? I mean, it's
9 come up
10 here --

11 MR. HOLOBER: It -- I think the issue came up
12 very clearly that "regularly scheduled" means a guarantee
13 that if you're voting to do something that is considered
14 generally not advantageous to a worker, namely, working
15 longer than an 8-hour day, that that -- you have a deal
16 that both sides will honor. What no one contemplated was
17 the notion that flexibility is controlled only by the
18 employer. There was ongoing debate for six months around
19 "What does flexibility mean?" And we said it should be
20 for workers, so that a worker should control their hours.
21 The employers said, "Well, we want workers to have
22 maximum personal freedom, but we'll decide what their
23 hours are." And the deal was cut. The employer puts it
24 in writing, it's very clear about what that schedule is,

1 and the workers then vote for it. And once they've
2 established that schedule, that is the schedule that they
3 can expect to work.

4 Now, I know there's an issue that, you know,
5 maybe you need to talk more in-depth about Mr.
6 Dombrowski's point, this one -- you know, once-in-a-
7 lifetime occurrence, right, where there's a mechanical
8 failure. I mean, you know, I think that's something you
9 need, maybe, to get a lot more testimony on.

10 But what I'm talking about is a huge loophole
11 that an employer can use, and that this contract allows,
12 where an employer can say, "You know, we're not so busy
13 today, folks; you're going home after 9 hours," even
14 though you've planned your life to have 12-hour days.

15 COMMISSIONER BOSCO: Well, I understand the
16 loophole. What I'm asking, though, is did the
17 Legislature specifically consider that loophole? I mean,
18 at committee hearings, did that issue come up and did
19 they either not do anything about it or defer it or --

20 MR. HOLOBER: Well --

21 COMMISSIONER BOSCO: Or was it something
22 everybody just overlooked?

23 MR. HOLOBER: No. I think that there was
24 extensive testimony, in hearing after hearing, about what

1 is flexibility. Does it mean the boss can just send you
2 home early one day? And this legislation was designed to
3 say, "No, it doesn't mean that."

4 So, I think the legislation is real clear that
5 the words "regularly scheduled" address that. "Regularly
6 scheduled" doesn't mean flexible. And your section in
7 the healthcare piece speaks about "flexible scheduling."
8 I think those words should be struck, because that's a
9 term of art that employers use to say, "We can decide
10 what the daily hours are." It's a "regularly scheduled
11 alternative schedule" -- "workweek schedule" that is as
12 key to the integrity of AB 60 as anything else in here.

13 We worked out a compromise where we said, you
14 know, "Yes, some people may want to work 10 hours, or,
15 okay, 12 hours maybe, but there's a tradeoff and there's
16 a guarantee in exchange for that."

17 Thank you very much.

18 COMMISSIONER DOMBROWSKI: I have a quick
19 question. On the example we talked about, of this make-
20 up time, if you have an alternative work schedule, four
21 10's, typically Monday through Thursday, and you can't
22 work Monday and want to work Friday, what's your take on
23 that?

24 MR. HOLOBER: Well, I don't think the bill

1 really allows that, because, first of all, this was done
2 mainly to accommodate someone who works five days a week,
3 okay, that wants to take a half-day off and then would
4 work some extra day -- time on the other days. So,
5 somebody in your situation already has voted for
6 something that gives them three days off each week. Now,
7 if an employer really wants to accommodate that -- first
8 of all, I think an employer who's trying to do what's
9 right for the workers can create an alternative workweek
10 that would allow exactly that, by saying, "Folks, we want
11 you to vote on a schedule that is 10 hours a day, five
12 days a week, Monday through Friday, and each week, you
13 tell us what days you want to work." That takes care of
14 that problem. If the worker has the right to determine
15 their schedule each week, and change their schedule each
16 week, that employer has complied with AB 60 and you've
17 got the best of all possible worlds, total flexibility.

18 I think the problem here is that, you know, the
19 testimony I heard is, "Well, we want one side of that,
20 which is, yeah, we want everybody to work Monday through
21 Thursday and have them vote for that, okay, but not give
22 them the flexibility to say, you know, 'I want to work
23 Friday this week and Thursday next week and Friday the
24 following week.'"

1 COMMISSIONER DOMBROWSKI: I don't think you can
2 plan a scheduling system that way, first off. But --

3 MR. HOLOBER: I agree.

4 COMMISSIONER DOMBROWSKI: -- I'd disagree on
5 that point.

6 MR. HOLOBER: No, I agree, for some industries
7 it wouldn't work.

8 COMMISSIONER DOMBROWSKI: But the -- but it
9 seems to me, if we don't allow for the employee to do
10 some of that make-up time, the employee just loses those
11 earnings for that week, and I don't think they come out
12 very well because of that.

13 MR. HOLOBER: You're talking about somebody
14 who's got a three-day weekend every week.

15 COMMISSIONER DOMBROWSKI: Right. No, I mean --
16 but they're losing -- if they couldn't work Monday, they
17 lost 10 hours of work that day, and they can't make it
18 up, they don't get paid for that day.

19 MR. HOLOBER: Well, what they could, first of
20 all, do is they could work up to 11 hours on the other
21 days. The bill allows that. So, they could take 4 hours
22 off on Monday, work 11 Tuesday --

23 COMMISSIONER DOMBROWSKI: No, if they have --

24 MR. HOLOBER: They could take 3 hours off from

1 work.

2 COMMISSIONER DOMBROWSKI: They could make up 3
3 of them --

4 MR. HOLOBER: That's right, yeah.

5 COMMISSIONER DOMBROWSKI: -- out of the 10.
6 They still miss -- they still lose out on 7 hours of pay,
7 then. How is that good for the employee?

8 COMMISSIONER BROAD: Well, I do think they get
9 to work up to 8 hours without overtime on another day.

10 COMMISSIONER DOMBROWSKI: So, they'd have to --
11 you'd have to juggle it around and work 3 hours on --

12 COMMISSIONER BROAD: I think so.

13 COMMISSIONER DOMBROWSKI: Okay.

14 COMMISSIONER BROAD: Mr. Chairman, can I just
15 make a request that the staff make, as part of our
16 record, the letter to the *Journal* referred to by Mr.
17 Holober.

18 COMMISSIONER CENTER: Yes, it will be.

19 MR. HOLOBER: Great. Thank you very much.

20 COMMISSIONER CENTER: Thank you.

21 With that, we're going to take our break. It is
22 now twenty till one. Let's come back at ten after one
23 and start the healthcare industry.

24 (Thereupon, at 12:42 p.m., the public

1 hearing was recessed for lunch.)

2 --o0o--

3

4

5

6

7

8

9

10

11

12

13

14 A F T E R N O O N S E S S I O N

15 --o0o--

16 (Time noted: 1:19 p.m.)

17 COMMISSIONER CENTER: Good afternoon. We have a
18 quorum, so we'll continue our testimony. We'll go now to
19 the healthcare industry that did not come up to testify
20 on the other nursing issue.

21 And I'll bring up, first, the two ladies from
22 Mad River Community Hospital, Patricia and Sandy Rock.

23 MS. PRATOOMRATANA: Hi. Patrice, again.

24 I am a licensed registered respiratory

1 therapist.

2 COMMISSIONER CENTER: You need to state your
3 full name again for the record.

4 MS. PRATOOMRATANA: Patrice Pratoomratana.

5 COMMISSIONER CENTER: Thank you.

6 MS. PRATOOMRATANA: Mad River Hospital in
7 Arcata. And I'm a licensed registered respiratory
8 therapist.

9 I wanted to continue where I left off.

10 The main thing we would like to ask for is just
11 a choice. We need some options. We feel like we're
12 pretty much being forced to either go to 8-hour shifts,
13 or, if we have to stay and get paid time and a half,
14 which we would love -- but we like where we work, we like
15 our hospital. A lot of hospitals are so tight right now,
16 with capitation and having no money, they can't afford to
17 pay the time and a half. We want the option to waive the
18 time and a half. We just want a choice.

19 We're used to living in a democracy. We don't
20 feel good about being forced, and that's what it's --
21 it's pushing us into the corner. And we -- I know a lot
22 of hospitals will probably fold. They will close their
23 doors. People will be out of a lot of work. Patients
24 will not get the care that they need.

1 I live in a very small community, but the
2 hospital is very important. And if the hospital closes,
3 it would be a pretty sad state of affairs. A lot of
4 people would lose their job.

5 We just want a choice. We want an option. We
6 want to be able to waive time and a half, if that's what
7 we want to do. And that's what a lot of us would like to
8 do to stay where we are. We enjoy what we do, where we
9 are, the patients we care for.

10 The other thing that really bothers me more, on
11 a personal note, is, with alternative workweek schedules,
12 it affords people, spouses, to work, both work full-time
13 and not have to use childcare or sitters. This really
14 bothers me. If I had to go to 8-hour shifts and my
15 husband did too, I'd have to start to put my kids in
16 childcare or daycare, and this is directly affecting our
17 future. I don't want to have somebody else raising my
18 kids for me. This is very personal topic, but I think it
19 is very important.

20 Like I said, the children are our future, and if
21 I have to start putting my kids in childcare or sitters,
22 it makes me very upset, and I don't think my children
23 will be raised and be as healthy and stable as they are
24 being raised by me and my husband. And that's a very big

1 issue.

2 We would just like to be exempt. Hospital
3 workers, healthcare professionals, are used to working
4 12-hour shifts. And actually, the patients get better
5 care, better continuity of care.

6 Like I said before, we need those three, four
7 days off a week just to regroup. It's very stressful,
8 what we do. We'd like to be considered as professionals.
9 And my hospitals, nurses, respiratory therapists, allied
10 medical professionals, they work on 12-hour shifts, and
11 it works. It works really well. The patients get better
12 care. The staff is a lot -- they're better able to deal
13 with life and death on a daily basis when they're at
14 work. It affords us the time to regroup and recuperate
15 and then go back to work with a clear mind and being
16 rested and deal with the stresses we have to deal with on
17 a daily basis.

18 So, I would just like to be able to ask to be
19 exempt. And just give us an option, just sign a simple
20 waiver that says we don't want the time and a half. That
21 would make a huge difference, and I think it would
22 probably save a lot of hospitals -- a lot of employees
23 from losing their jobs, a lot of hospitals from closing
24 their doors.

1 Thank you.

2 COMMISSIONER CENTER: Thank you.

3 MS. ROCK: Good morning -- good afternoon. My
4 name is Sandy Rock. I work at Mad River Community
5 Hospital also.

6 And continuity of patient care is of our utmost
7 -- what is important. But I'm going to speak on a
8 personal level. I'm a full-time graduate student. And
9 if I have to go to 8-hour shifts, I can't finish school.
10 I've put a lot of time, effort, and money into finishing
11 my education. And if I can't do it, then I'm out a lot.
12 And so, I would prefer to have the choice to work a 12-
13 hour shift so I can finish school and go on with my --
14 finish my degree.

15 Thank you.

16 COMMISSIONER CENTER: Thank you.

17 Any questions?

18 (No response)

19 COMMISSIONER CENTER: Thank you.

20 Linda Hayes.

21 MS. HAYES: My name is Linda Hayes. I'm a
22 critical care registered nurse. I work in a small
23 hospital in north California. And these changes are
24 going to affect all hospitals, small hospitals

1 especially, as they were just talking about.

2 I do staffing for my critical care unit. And we
3 do -- well, I have some things I need to directly address
4 here in the draft interim wage order.

5 One, as the gentleman from CNA was talking
6 about, regularly scheduled workweek, what does that
7 really mean? And, you know, we work flexible -- I mean,
8 we don't work Monday, Tuesday, Wednesday, or Wednesday,
9 Thursday, Friday. We work the hours we need to work to
10 cover the staffing to cover our unit. Sometimes, if the
11 census is real high, people may work extra, or if the
12 census is low on Monday and it goes up to a full unit on
13 Friday, people that were off on Monday will offer to work
14 on Friday. These things, you know, really affect how we
15 take care of our patients.

16 The second thing I want to address is, I really
17 am bothered, and I was before -- I'm still bothered by
18 the concept that registered nurses are not professionals.
19 The rules for being a professional are that the work is -
20 - I do earn a salary well over two times the minimum
21 wage. And by the way, I figured it up real quick. That
22 is \$26,700, approximately, a year, if you're working 8-
23 hour shifts 40 hours a week. I work 36 hours a week, so
24 I'm not sure where that puts me in there.

1 I do earn over minimum wage. My job is
2 intellectual. It requires an exercise of discretion and
3 independent judgment. I am licensed by the State of
4 California and certified by a national organization. And
5 I work in an occupation that used to be commonly
6 recognized as a learned profession. And I work as a
7 professional 100 percent of the time when I am at work.

8 So, it's -- that's been there. It bothered me
9 before, and, like I said, it still bothers me.

10 One thing that I think needs to really be
11 addressed is Section (C). And it talks about full-time
12 employment, and it sets it at 40 hours per week. I work
13 36 hours a week. What does that do? All my co-workers
14 work 36 hours a week. We have taken this option to work
15 36 hours a week. If we need extra money, we can pick an
16 extra 4 hours. But it's something that does need to be
17 addressed.

18 So -- and that's something that I think needs to
19 be negotiated between employer and employee. You know,
20 it's not something that really needs to be defined by the
21 state.

22 Section 7, Part (A), the option of belonging to
23 a union should be a decision made by an employee group,
24 not mandated by the state. And that's what this does.

1 It says if I want to work my 12-hour shifts, 36 hours a
2 week, I have to join a union.

3 COMMISSIONER CENTER: That's not true.

4 MS. HAYES: California already has a critical
5 experienced nurse shortage. Everybody knows that. They
6 even are doing laws forcing schools into letting more
7 nurses in. But these are new graduates; they aren't
8 going to be out there for four or five years.

9 Excuse me.

10 The experienced nurses in California feel 12-
11 hour shifts are a benefit. They will leave. I will
12 leave. I won't work 8-hour shifts. My little \$60,000 a
13 year doesn't mean much in taxes, but when you're looking
14 at healthcare in California, if you lose your experienced
15 people, who's going to train these new ones coming? It
16 just -- this whole thing is going to take healthcare in
17 California and destroy it.

18 And we keep talking about how important it is
19 that people get healthcare, how important it is that they
20 receive good healthcare, and yet we're taking something
21 and it's just going to destroy it in this state.

22 The only other thing I have to say is, the whole
23 thing kind of smacks of punishing the workers in the
24 state that earn more money by putting them in the same

1 class as workers that aren't able to think for
2 themselves. I think, as a professional, I should be able
3 to negotiate with my employer for the hours I want to
4 work, the days I want to work, when I get paid overtime,
5 and when I'm off.

6 Thank you.

7 COMMISSIONER CENTER: You're -- are you
8 currently working in 12-hour shifts?

9 MS. HAYES: I am currently working 12 -- have
10 been, for about fifteen years.

11 COMMISSIONER CENTER: And you understand that is
12 in effect till July 1st in your nursing industry?

13 MS. HAYES: I realize that. But if I have to
14 put up my house for sale, I have to do it soon.

15 COMMISSIONER CENTER: And --

16 MS. HAYES: I will leave the state. I mean,
17 it's -- it's not an option with me, because I won't join
18 a union and I won't work five days a week.

19 COMMISSIONER CENTER: But, for your 12-hour
20 shifts, you don't have to be part of a union to work that
21 alternative workweek, as long as you elect that.

22 MS. HAYES: Not until July. But how do I do my
23 scheduling? I schedule, you know, a unit.

24 COMMISSIONER CENTER: Now, what we're doing

1 here, we're on the interim blank order. On your
2 industry, we're going to have further inquiries and a
3 hearing, and we will decide, the Commission, whether to
4 extend that exemption or not. It won't be that you'll be
5 required to join unions; it'll be whether it is
6 beneficial to the employees. We have not -- we haven't
7 even gone their yet. We're just doing the interim blank
8 order, which really doesn't affect you at all. It's --

9 MS. HAYES: I realize this, but at the same
10 time, July is five months away. You know, people need to
11 make plans. My staff asks me every time I do the
12 schedule. I'm working on, you know, vacation schedules.
13 And they said, "Well, what do we -- you know, where are
14 we going?" And I go, "I don't know. I read everything
15 out there, I've listened, I don't know where we're
16 going." And it's like nobody can plan. Nobody knows
17 what's going to happen with their lives. It's
18 disrupting.

19 At the moment, we're going, essentially, week by
20 week. But, you know, we -- people need to make plans.
21 You're talking a large industry in this state, a well-
22 paid industry in this state, and something that's real
23 important to the people of the state. And they need to
24 have some answers.

1 COMMISSIONER CENTER: Thank you.

2 COMMISSIONER DOMBROWSKI: I would -- I have a
3 question. What would your reaction be to some kind of
4 procedure that allows you, similar to some of these other
5 -- where you could hold elections for up to 12 hours
6 within a 40-hour workweek?

7 MS. HAYES: I have no problem with that. We had
8 done that years ago, you know, when we went to the 12-
9 hour shifts where I'm working at now. And we had
10 discussed it and worked it out and had elections among
11 the employees, and opted to do it. In fact, I don't
12 think any employee voted against it at the time.

13 And that's not a problem. Our problem is, is
14 right now we're up in the air and the hospitals are up in
15 the air, because there are so many things that are so set
16 in here. "Regularly scheduled alternative work
17 schedule," you know, that's a term that you can take
18 literally, meaning, you know, you're scheduled every
19 Monday, Tuesday, Wednesday, and if you work on Thursday
20 because the census is high, I have to pay you overtime,
21 those kind of things. It's -- there are some definitions
22 out there that might work well for an 8-hour-day, five-
23 day-a-week job at McDonald's, but they do not work in the
24 healthcare industry. And it needs to be looked at in

1 that way.

2 COMMISSIONER CENTER: Thank you.

3 Linda Hayes. Oh. I'm really good at these
4 cards.

5 Carol Mantell -- Mantell.

6 How about Kimberly Martin Pickard?

7 MS. MANTELL: She had to leave.

8 COMMISSIONER CENTER: Amy Meier, is she still
9 here?

10 And Pamela Broderson -- if I can get a few
11 people up here.

12 Go ahead, ma'am.

13 MS. MANTELL: Good afternoon.

14 COMMISSIONER CENTER: Good afternoon.

15 MS. MANTELL: My name is Carol Mantell, and I'm
16 a professional registered nurse. I work in the intensive
17 care and neuroscience intensive care at John Muir Medical
18 Center in Walnut Creek. I maintain specialty
19 certification in my area of critical care. And I will be
20 very brief.

21 I just want to name a couple of problems or
22 difficulties that will be incurred by AB 60 when the
23 exempt -- well, when the grace period, as we're calling
24 it at our hospital, is finished in July, when we would

1 have to go to 8-hour shifts.

2 We started our 12-hour shifts by a vote from our
3 employees. And we have a combination of both 8's and
4 12's in my unit, and it's an option. If you want to work
5 12-hour shifts, then you choose a 12-hour day to be your
6 workday. If you would prefer to work an 8-hour schedule,
7 then they -- then that's what they choose to be their
8 workday. Anything over 12 hours for the 12-hour nurses
9 is double time. Anything over 8 hours for the 8-hour
10 nurses is time and a half, and then double time after 12,
11 like normal.

12 What we really appreciate our employer doing for
13 us is allowing us to work the 12-hour shifts. We
14 approached them and said that, you know, we're having a
15 nursing shortage, we need people to come out of the home
16 and into the workplace, and if we can offer 12-hour
17 shifts, we think more people will be able to come and
18 work in a full-time status. If 12-hour shifts are not
19 available to the nurse in my unit, several of them will
20 have to give up their full-time status and drop back to
21 part-time because they cannot be pulled out of their
22 homes five days a week. So, they will lose pay, they
23 will lose benefits, and then the hospital will lose the
24 professional nurses that they, you know, need to take

1 care of their patients. So, it's a double-edged sword,
2 and we're hopeful that we can get an exemption.

3 Working a compressed workweek has been
4 beneficial to everybody in my unit. The majority of us
5 have small children. It allows us to go to field trips
6 and have Girl Scout troops and do all those things that a
7 lot of the people that work full-time, or a full-time 8-
8 hour shift, cannot do. And working a compressed
9 workweek, three 12's, gives us the extra days off to
10 attend to our families in the manner that we like to do.

11 My husband is also a registered nurse. He works
12 12-hour shifts. He works in the field of psychiatry.
13 And our schedule allows us to maintain the care of our
14 children. No one else has to -- we don't have to pay for
15 childcare, nobody else has to come into our home, our
16 children are cared for by us, which is very important.

17 We've heard rumors, and I'm not sure if I can
18 ask for clarification about this, that there is an
19 exemption that's being considered or has been made for
20 union hospitals to still have the availability to vote on
21 working a 12-hour schedule without being paid overtime
22 for the last 4 hours. And it's a bit ironic, because the
23 facility where I work, we've merged with a union
24 hospital. Our campus is non-union, our sister campus is

1 union. So, the nurses at the sister campus, if what I
2 believe is true, will be able to work 12-hour shifts, and
3 us, who work for the same company, will not be able to
4 work 12-hour shifts without being paid overtime. And I'm
5 not quite sure if that's hearsay or if that's -- that's
6 actual fact.

7 COMMISSIONER CENTER: That's the law, if the
8 collective bargaining agreement -- their collective
9 bargaining agreement will cover overtime. But this
10 depends on what the Commission decides before July 1st --

11 MS. MANTELL: Right.

12 COMMISSIONER CENTER: -- whether you can
13 continue your 12-hour shifts or not.

14 MS. MANTELL: Right.

15 Our biggest concern right now is all the
16 hospitals in the state and in the country right now are
17 experiencing many, many patients, sicker patients, and
18 fewer resources, fewer nurses and fewer respiratory
19 therapists. And working a compressed workweek attracts
20 people to come to those facilities and come to our
21 facility and help us to deliver quality care to our
22 patients. And we're hoping that we'll be able to be
23 exempt and continue to do that.

24 I really appreciate this opportunity. I know

1 that the staff at my hospital is -- they're very nervous
2 because they -- we're looking at possibly restructuring
3 80 employees that I work with, in just my department,
4 trying to figure out, "Now, who's going to work nights,
5 who's going to work PMs, and who's going to work days?"
6 Right now, we have, you know, everyone set into their
7 little niche. And do we go back and draw straws and
8 figure out who's going to work what shift? So, they'd
9 really like answers, and the sooner the better, if
10 possible.

11 So, I really appreciate your time and
12 consideration. I ask that the Commission consider
13 exemptions to be made to allow healthcare employers to
14 allow their employees flexible scheduling opportunities,
15 including shifts up to 12 hours in length at straight
16 pay. It's what we had elected to do. We voted, we
17 signed a waiver for overtime, and it worked out really
18 well.

19 So, I appreciate your time. Thank you.

20 COMMISSIONER CENTER: Commissioner Broad?

21 COMMISSIONER BROAD: Yeah. I have a couple of
22 questions.

23 You went from 8-hour days to three 12-hour days,
24 is that correct, with no loss of pay?

1 MS. MANTELL: I went -- let's see. When we
2 first initiated 12-hour shifts in my unit, it was
3 approximately ten years ago. And I went from full-time,
4 8-hour -- I actually worked night shift at the time -- to
5 full-time, 12-hour night shift, three 12's. So, I went
6 from 8-hour night shift to 12-hour night shift.

7 COMMISSIONER BROAD: Okay. So, you went from 40
8 hours --

9 MS. MANTELL: Right.

10 COMMISSIONER BROAD: -- to 36 hours.

11 MS. MANTELL: That's correct.

12 COMMISSIONER BROAD: But at the same pay.

13 MS. MANTELL: My pay is hourly. So, I did have
14 4 hours less of pay. But I did it completely voluntarily
15 to allow me to have the extra time with my family. My
16 employer did not approach me about working 12-hour
17 shifts. As a matter of fact, I was on a committee to
18 approach our administration to please allow us to work
19 the 12-hour shifts.

20 So, yes, we work a 36-hour workweek, and that is
21 considered a full-time status with full-time benefits.

22 COMMISSIONER BROAD: Okay. Now, my second
23 question is, what classifications of workers in your
24 hospital work 12-hour shifts?

1 MS. MANTELL: We have respiratory therapists
2 that work 12-hour shifts, we have registered nurses in
3 our critical care areas and on a few of the med-surg
4 floors that work 12-hour shifts, and in the birth center
5 and in the intensive care nursery --

6 COMMISSIONER BROAD: Okay.

7 MS. MANTELL: -- we have nurses.

8 COMMISSIONER BROAD: Do pharmacists work 12-hour
9 shifts?

10 MS. MANTELL: I don't believe so, but I'm -- I'm
11 not -- I'm not sure.

12 COMMISSIONER BROAD: Do pharmacists in your
13 hospital -- do you notice them having direct patient
14 interaction with patients?

15 MS. MANTELL: Well, like I said before, I
16 primarily night shift, so if they were going to have --
17 and I also work in a critical care unit, and the majority
18 of my patients are comatose, so I don't see them
19 interacting with them.

20 (Laughter)

21 COMMISSIONER BROAD: Okay.

22 MS. MANTELL: But I don't -- I don't believe
23 that they -- I don't believe that they do that as much.
24 A lot of the communication is from the nurses to the

1 pharmacists.

2 COMMISSIONER BROAD: Okay. Now, are there any
3 non-direct-patient-care personnel working 12-hour shifts
4 at your facility?

5 MS. MANTELL: No. Currently we have some unit
6 secretaries that work a 10-hour shift that they elected
7 to do, and -- but otherwise, they work -- I believe the
8 unit secretaries in the rest of the hospital work 8-hour
9 shifts.

10 COMMISSIONER BROAD: And -- I'm sorry -- where
11 did you say you work?

12 MS. MANTELL: I work in the -- I work at John
13 Muir Medical Center in Walnut Creek, and we've recently
14 merged with Mount Diablo Medical Center in Concord.

15 COMMISSIONER BROAD: Thank you.

16 MS. MANTELL: Thanks.

17 COMMISSIONER CENTER: Thank you. And just to
18 speed things up, especially for the registered nurses, we
19 will consider your order, which will expire in July, to
20 decide whether we're going to continue the 12-hour
21 exemption or not. So, unless you have a comment on the
22 regulations themselves, if you'd just like not duplicate
23 testimony and just introduce yourself and -- to speed it
24 up -- if you could.

1 So, you're next, ma'am.

2 MS. MEIER: My name is Amy Meier, and I have
3 flown up here from San Diego, representing Scripps
4 Memorial Hospital, specifically in La Jolla, where I am
5 employed, and largely Scripps Memorial Hospital system.
6 It is a multi-hospital system consisting of six
7 hospitals.

8 I am up here, basically, with the two people who
9 have come before me, with the same statements. We are
10 desperately searching for a way to find the ability to
11 have a choice to work our 12-hour shifts.

12 Specifically, on my unit, we have been working
13 12-hour shifts for twelve years. I have only been there
14 for -- you know, for a short -- I haven't been there the
15 entire time. When that happened, in direct response to
16 what you were asking, people went from a 40-hour workweek
17 to a 36-hour workweek voluntarily, for full-time
18 employees. They did not take a pay cut. You know, the
19 pay was adjusted so that people did not lose money
20 because we voluntarily wanted to do this, but the
21 hospital compensated for the loss of the 4 hours.

22 What has happened now is our hospital cannot
23 afford, in this -- in today's healthcare, you know,
24 economy, we cannot afford to pay employees time and a

1 half and stay at the current rate that we are paying them
2 for 12 hours without adjusting and fluctuating the base
3 rate of pay. We -- all of us on our unit want to work 12
4 hours.

5 Who works 12-hour -- the 12-hour schedules on
6 our unit? Everyone, unit secretaries, our service
7 partners, our OR techs. And I am, like I said, on labor
8 and delivery. And people have voluntarily wanted to work
9 that. We do have some service partners who, for family
10 and other obligations, have decided to work 10-hour
11 shifts. We have other units within this hospital that
12 work 8-hour shifts. Some floors work 12- and 8-hour
13 shifts, depending on the employees' needs. Our hospital
14 has generally been very accommodating, so that all
15 aspects of life are considered, to keep our skilled
16 nursing professionals within the hospital.

17 Just like she was saying, we're having a
18 shortage. And whatever we can do to help employees stay
19 happy and provide for quality care to our patients,
20 that's what we're trying to do.

21 And all we're asking is to have the choice,
22 whether it's a vote, whether it is secret-ballot vote, I
23 mean, just give the employees a choice. Our hospital is
24 willing to, you know -- trying to accommodate them in any

1 way they can, but financially, they are under constraints
2 as well.

3 We are looking at losing a lot of staff if July
4 1st, if we go to 8 hours. And this is a reality. People
5 have already said, "Yes, it's four months off," but they
6 are making plans. We have currently, just on my unit
7 alone, lost four skilled labor and delivery nurses who
8 have moved out of state because they do not wish to even
9 deal with the problem of maybe having to go to an 8-hour
10 schedule. They are looking for work other places. If
11 nurses continue to leave the state and continue to leave
12 the hospital, we're going to have a real problem. And
13 people -- the people who are going to be affected are the
14 citizens of the state, the people who go into the
15 hospitals, women who are having the babies. You know,
16 it's just -- I think the issue needs to be really
17 considered, to give us an option.

18 COMMISSIONER CENTER: Thank you.

19 Pamela Broderson, Vivian Miller, Barbara Blake,
20 Jeanette Mason, Dawn Dingwell, Deborah Portela, Jay
21 Allen.

22 MS. DINGWELL: Good afternoon, Chairman Center
23 and commissioners. My name is Dawn Dingwell, and I am
24 the Director of Legislative Affairs for the California

1 Association of Health Facilities. CAHF is a nonprofit
2 professional association representing more than 1,500
3 licensed long-term care health facilities in California.
4 Our members included skilled nursing facilities for the
5 chronically ill or aged, subacute care facilities
6 focusing on intensive rehabilitation and post-surgical
7 recovery for residents of all ages, facilities for the
8 developmentally disabled and the mentally ill, as well as
9 assisted living facilities for the elderly. Our
10 facilities range from home settings with an average of
11 six beds to facilities serving more than 100 residents.

12 We're here today to ensure that you understand
13 that the different needs of our patients and our staff
14 and our facilities are distinguished from a hospital
15 setting or in-home care services. I have with me two
16 members of our association who are available to provide
17 their expertise and personal experience on these issues
18 and answer any questions you may have. But before I turn
19 the mike over to them, I would like to briefly summarize
20 some of our practical realities that are facing our
21 industry and what we need the Commission to address in
22 the new wage order.

23 Long-term care requires extended shifts and
24 flexible work schedules to meet patient and staffing

1 needs. I know we've heard a lot today, and you've heard
2 in prior hearings, about the importance of continuity of
3 care, so I won't spend a lot of time on that issue. But
4 I will just briefly state that flexibility in scheduling
5 employees in a long-term care setting is essential to
6 provide continuity of care to patients requiring 24-hour
7 supervision and nursing care.

8 Continuity of care is also important to our
9 residents who are more comfortable having their personal,
10 intimate care needs addressed by the same person
11 throughout the day. Continuity in staffing is also
12 critical to patients who are easily confused and agitated
13 in our long-term care settings, including folks with
14 Alzheimer's disease or mental illness.

15 We also need flexibility in our industry to meet
16 the staffing demands. We are in a serious staffing and
17 funding in our industry, and flexibility is the only
18 thing that's allowing us to meet our current staffing
19 needs. Unlike a lot of the other healthcare providers
20 you've heard from, long-term care facilities rely mostly
21 on MediCal to pay for patient care. Because MediCal does
22 not fully cover the cost of care, long-term care
23 facilities are severely under-funded. Over 119
24 facilities in California are currently in bankruptcy

1 proceedings.

2 The problem is, is that the MediCal system does
3 not adequately account for serious increases in overtime
4 pay. Our providers are working within tight budgets to
5 carefully balance staff work hours with needed patient
6 care, but the inadequate MediCal rates keep wages low.

7 Providing care to long-term care residents is,
8 of course, physically and emotionally demanding work.
9 And in our current full employment economy, we're facing,
10 again, a very serious staffing shortage. Our turnover
11 rate is over 70 percent. Over 10 percent of staffing
12 jobs are unfilled in our facilities statewide, and the
13 average facility is short at least two full-time
14 employees. It's estimated that we need over 30,000
15 workers to fill our current staffing requirements.

16 This is not a temporary crisis. We've been
17 experiencing it for many years. And although we are
18 hopeful, we do not see any end to the funding or staffing
19 crisis in the near future. Accordingly, we absolutely
20 require flexibility in scheduling to allow facilities to
21 fill staffing gaps by scheduling the limited number of
22 employees available for longer periods, to hire -- allow
23 facilities to hire workers who may only be available
24 through flexible staffing arrangements. And we've heard

1 several folks mention their own personal needs today.

2 But, again, I'll touch on a few of those.

3 Working moms and parents rely on flexible work
4 schedules to get paid for full workweeks and only work a
5 limited number of days. It's also easier and more
6 affordable to obtain childcare for three days rather than
7 five days. Weekend workers or students who work two 16-
8 hour shifts or three 12's find that schedule to be -- to
9 meet their needs in our -- in our industry. And also, a
10 lot of our workers have second jobs. Many of our workers
11 also rely on public transportation and have commutes from
12 one and a half to two hours, especially in the Los
13 Angeles area. And the longer shifts allow them to put in
14 more hours, but less days.

15 We also require flexibility to hire live-in
16 staff or sleep-over staff that work 24-hour shifts.

17 We have submitted written testimony that
18 enumerates our recommendations specifically in the draft
19 interim wage order. And we've recommended some specific
20 changes and language. I'm not going to go into that now,
21 in consideration of time. And I'd like to let our
22 members speak about their own practical experience, but I
23 would like to cover, briefly, a couple of key issues.

24 COMMISSIONER CENTER: Could you -- we're trying

1 to enforce a three-minute limit here too, so be brief, if
2 you could.

3 MS. DINGWELL: Okay. Just a couple of issues.

4 Any exemption that is created should be
5 industry-based and not based on individual employee
6 status. In the past, the IWC has always recognized the
7 healthcare industry as a whole under Wage Order 5. And
8 we believe that this type of approach makes sense.

9 We have heard some concerns that the Commission
10 may be considering exemptions that recognize only
11 licensed staff in a healthcare setting, and this type of
12 approach would fail to recognize the current model of
13 long-term care delivery that's been in place for the last
14 twenty-five years. It's most important to understand
15 that, unlike hospitals, primary caregivers in long-term
16 care facilities are frequently unlicensed or certified
17 staff. In nursing facilities, certified nursing
18 assistants provide the bulk of direct care, including
19 bathing, toileting, feeding, and other personal care
20 needs, and assistance with the activities of daily
21 living. In facilities for the developmentally disabled,
22 direct care staff perform similar services and are
23 specially trained --

24 COMMISSIONER CENTER: Excuse me. You'll have to

1 wrap it up here pretty quickly.

2 MS. DINGWELL: Thank you. -- but they are not
3 certified or licensed.

4 And now I'd like to ask our members to go ahead.

5 COMMISSIONER CENTER: Thank you.

6 MS. PORTELA: Hi. My name is Debbie Portela,
7 and I own and operate a 138-bed facility in Rancho
8 Cordova. And I appreciate you giving us the opportunity
9 to talk to you today.

10 As Dawn mentioned, we -- we are in a staffing
11 crisis right now. I've been an administrator for sixteen
12 years in this area, and during that time I don't think
13 there's been a time that -- we need more flexibility in
14 being able to attract workers to our industry. Our
15 industry has been under extreme attack by -- by different
16 -- you know, around quality care and staffing levels.
17 And in the Governor's budget now, we already have
18 increased staffing requirements that went into effect
19 January 1st. And the day that those staffing
20 requirements went into effect, we could not meet them
21 because the worker is not even out there to hire.

22 And we're trying to look at innovative ways to
23 attract people to our industry, which largely employs
24 women and largely employs single women who are trying to

1 raise kids, and in doing that, at a wage of -- the
2 licensed nurses make great wages, but we're trying to
3 attract licensed nurses from hospitals that can work 12-
4 hour shifts. And I'm trying to staff a 24-hour nursing
5 facility.

6 The nursing facilities take care of frail, sick
7 residents now. We aren't housing little old ladies any
8 more and just giving them meals. We're taking care of
9 patients that need continuous nursing assessments. We're
10 handling all types of complex nursing issues. And we
11 have to staff our hospitals 24 hours a day with licensed
12 help that -- that make up registered nurses and licensed
13 nurses and certified nursing assistants. The licensed
14 portion of our staff is about 25 percent of that direct
15 care staff. The other 75 percent are certified nursing
16 assistants. But we still have to maintain that staff 24
17 hours a day.

18 And in order to attract the licensed nurses that
19 we need, it's -- we need to have -- be able to offer them
20 12-hour shifts. We've never been able to do that before,
21 and so it's hard to offer 10-hour shifts to licensed
22 nurses. Then you're stuck with 4 hours at the end of the
23 day that -- who are you going to get to work a 4-hour
24 shift, you know?

1 So, we're just asking for you to consider our
2 industry when you're looking at this legislation, and try
3 to keep us in mind, because we're trying to provide the
4 most quality care that we can provide in our industry,
5 and we need that flexibility in order to do that. And
6 our -- our nurses have asked us about 12-hour shifts, and
7 I have never, in my facility, been able to do that under
8 the current wage order.

9 CNAs also should be considered as direct
10 healthcare workers. We're trying to have them be
11 recognized as a professional part of our healthcare
12 delivery system. They take care of the elderly and the
13 infirm, and they're the ones that are providing the bulk
14 of that direct care work. And we're trying to get them
15 to get people attracted to that field, where they only
16 can make maybe \$8 an hour at a starting wage now in
17 California. Well, if they could work a 10-hour shift,
18 then they could -- and work three days, which many of
19 them only work part-time -- a lot of our shift, they'll
20 only work -- they can only work three days a week,
21 because maybe they're going to school, or maybe they're -
22 - they have their kids.

23 And so, if we could have flexibility, we wish
24 that -- we feel like it would help us to deliver more

1 quality care and also attract more workers and give them
2 the flexibility that they need.

3 COMMISSIONER CENTER: Thank you.

4 MR. ALLEN: My name is Jay Allen. I'm the
5 executive director of RCCA Services, which is an
6 organization that provides residential supports for
7 people with developmental disabilities. These facilities
8 are of a size of, often, over 100 people per home, but
9 most often usually six people.

10 And we're also here to ask for flexibility in
11 terms of scheduling for these homes. The people that
12 live in these homes need quite a bit of support to
13 successfully get through the day. And our direct care
14 staff, who are not licensed -- licensed or certified,
15 responsible for working with these folks and meeting
16 their needs during the day, since the law has changed, we
17 have been forced, due to the under-funding currently by
18 the state, to eliminate all of our flexibility that we've
19 had with scheduling. We have had people who are working
20 12-hour shifts, three days a week, and also staff members
21 that were working two 16-hour days a week. And that has
22 allowed for school commitments, childcare, and a variety
23 of other commitments that our staff have. And we've had
24 to eliminate that, and that has impacted the employees.

1 Not only are they not able to schedule more hours, but
2 having worked two 16-hour days, or 32 hours a week or 36,
3 they're eligible for health insurance. And if they're
4 not able to pick up the additional hours, they lose that
5 eligibility. And it's unfortunate.

6 We are in a staffing crisis; there's no question
7 about it. And we need as much flexibility as we can in
8 order to meet the needs of the developmentally disabled
9 in the community.

10 Thank you for your consideration.

11 COMMISSIONER CENTER: Thank you.

12 Any questions?

13 COMMISSIONER BROAD: How many of your employees
14 were working 16-hour days?

15 MR. ALLEN: I would estimate that we have
16 probably a handful, probably not more than ten.

17 COMMISSIONER BROAD: And that never raised an
18 issue of you -- of undue fatigue or patient care
19 consequences that were negative?

20 MR. ALLEN: No. No. As I say, most of the
21 homes -- in fact, all of the ones that I work with, six
22 people live in a home in the community, and it's a --
23 it's a home. And it is very intensive during particular
24 times of the day. If you think of yourself and what care

1 you would need if you needed that kind of support, during
2 the morning hours, in terms of bathing and showering and
3 getting dressed and fed, that is a very intensive time of
4 day. Other times, it's not as intensive. So, it has not
5 raised an issue.

6 In fact, just the opposite; the consistency and
7 the care that you can give, if you're not changing staff,
8 makes a big difference with these folks. Their needs are
9 very individualized. And since most of them are
10 nonverbal, you need somebody who's very familiar to
11 provide the service to them.

12 COMMISSIONER BROAD: Do they have -- I mean,
13 when you're saying they work 16 hours a day, is that
14 continuously, without breaks?

15 MR. ALLEN: No.

16 COMMISSIONER BROAD: How do they do that?

17 MR. ALLEN: No, they are able to -- well, most
18 of the time, there are two people that work in these six-
19 person homes, and there are periods of inactivity where
20 they can get away and have a break. We have -- we look
21 very closely at the quality of our services, and we have
22 seen just the opposite of what you're suggesting. We
23 have seen that our quality is better when we have
24 consistent staff members. And if we have more part-time

1 people or people working less hours, it hurts our
2 quality.

3 So, I appreciate what you're saying, and it's a
4 potential issue, but we just simply haven't seen it.

5 COMMISSIONER BROAD: Thank you.

6 COMMISSIONER CENTER: Thank you.

7 Kate Gattuso, Jack McGee, Kerry Rodriguez
8 Messer, Marianne Ward.

9 Kate Gattuso, I think, is first.

10 MS. GATTUSO: Hello.

11 COMMISSIONER CENTER: Hi.

12 MS. GATTUSO: Kate Gattuso. I work at Stanford
13 University Hospital and San Mateo County General
14 Hospital. I'm a respiratory therapist, and I've been a
15 respiratory therapist for 22 years, working in hospitals
16 and home care.

17 And we need the flexibility that everyone else
18 has said, to staff our -- our hospitals and our care
19 centers. And at Stanford, we work 8-, 10-, and 12-hour
20 shifts within the Respiratory Therapy Department. We
21 need that flexibility to cover our needs.

22 That's all.

23 COMMISSIONER CENTER: Thank you.

24 Jack McGee.

1 MR. McGEE: Thank you, Chair Center,
2 commissioners. My name is Jack McGee. I am a
3 respiratory care practitioner. I'm here today to speak
4 in favor of 12-hour shifts, and I've been working this
5 schedule three days a week for the past eight years at
6 Stanford University Hospital.

7 Many of my colleagues and I have previously
8 written the IWC, and no longer being able to work 12
9 hours will have dire consequences on our personal lives.
10 With these letters already on file, I assure you I will
11 try to avoid being repetitious.

12 Still, I must say, the comments by Richard
13 Simmons, representing the CHA, at the December meeting
14 describing 12-hour shifts as the first and foremost issue
15 before this Commission resonate well with me.

16 Primarily, I came here today to raise the bar
17 and broaden the scope of the issues before the
18 Commission, as I see them. If I may ask the indulgence
19 of this body, I believe I can identify these larger
20 issues in the next two minutes.

21 Having read the minutes for the prior three
22 meetings, I was motivated by Commissioner Broad's
23 observation at the December meeting that the Commission
24 had only heard from a small segment of workers in

1 healthcare. This gives me pause, for as I have stated,
2 many individuals have already provided written comments
3 to the Commission. And I wondered aloud what became of
4 our letters. Does the Commission not realize we
5 willingly work the hours we do?

6 I have a keen awareness of the difficult task
7 before the IWC. And even so, it strikes me that your
8 diamond in the rough has only one facet, wages. In the
9 real world, people work for and find gratification in
10 their work for a constellation of reasons. The rich life
11 extends well beyond the workplace. My government, my
12 church, advocacy groups, the media, and my conscience
13 fill me with a sense of what I as a citizen should be
14 doing. I aim to spend quality and quantity time with my
15 children in order to raise responsible adults and avert
16 youth crime. I should be volunteering my time. My
17 alternative work schedule allows me to participate in
18 programs sponsored by the Boy Scouts of America, for
19 example.

20 The reality of living in San Jose is worsening
21 traffic conditions in the year 2000. "Leave the car at
22 home" is a familiar mantra in our community. With fewer
23 days on the job, my car can stay in the garage more
24 often. I carpool whenever possible, usually three days

1 each week. In my case, acting socially responsible
2 depends on working 12-hour shifts.

3 I raise these points because they comprise the
4 strong undercurrent for this first and foremost issue. I
5 believe the highest undertaking for government is to
6 smooth the path for citizens to uphold lofty ideals. I
7 think it is wrong for any arm of the government to create
8 obstacles or otherwise work at cross-purposes to
9 achieving such goals. Restricting my ability to work a
10 compressed workweek, in my view, clearly conflicts with
11 the larger good in these other realms.

12 I would also like to resolve a question. Having
13 read the memorandum of December 23rd from the Labor
14 Commissioner, I am left wondering whether the IWC has the
15 authority to extend 12-hour exemptions beyond July 1st of
16 2000. An answer to this question is vital for all
17 healthcare shift workers. If the IWC is indeed
18 powerless, there are only three lines of recourse:
19 through the Legislature, change employment to a
20 government health facility, and collective bargaining,
21 although, as you heard, one individual is going to move
22 out of state.

23 Your attention to this question and mindfulness
24 of the broader ramifications stemming from AB 60 is

1 appreciated. Thank you for your time and courtesy.

2 COMMISSIONER CENTER: Okay. To answer your
3 question on the memo, that was written by the Labor
4 Commissioner, not by the Industrial Welfare Commission,
5 and the direction from our legal counsel, we would have
6 authority to extend 12-hour shifts.

7 MR. MCGEE: I'm heartened to hear that.

8 COMMISSIONER CENTER: And people moving out of
9 state, they probably have unions there too.

10 With that, Kerry Rodriguez Messer.

11 MS. MESSER: Right here.

12 COMMISSIONER CENTER: Yeah.

13 MS. MESSER: Hi. My name is Kerry Rodriguez
14 Messer, and I represent the California Association for
15 Health Services at Home. I want to thank you for letting
16 us speak to you today, and acknowledge right up front
17 that AB 60 is law. We're not going to try and overturn
18 that here, but believe that within your powers under
19 dealing with the healthcare industry, that there are some
20 concerns we have that you may be able to address or
21 provide us with some clarification.

22 Our members are primarily home health agencies,
23 hospices, and home care aid organizations. These members
24 provide nursing and other supportive services in the home

1 to patients. They range from things like assistance with
2 dressing and grooming to intensive nursing care, for
3 example, critically ill children who are trache-
4 dependent, but because of technology can remain at home.

5 Unlike other healthcare settings -- because I
6 know you've heard from a variety of healthcare
7 practitioners -- in-home care, the relationship is unique
8 in that it is one-on-one. And I think that that is what
9 divides us from the rest of the healthcare settings and
10 makes the continuity of care issue a very valid and real
11 one in the home care setting.

12 With the discussions, there's been an assumption
13 that the healthcare industry was taken care of until
14 July. But after speaking to several of the commissioners
15 and doing some research, it only took care of those that
16 were in a hospital setting or that had an alternative
17 work schedule in place prior to 1998. Unfortunately,
18 some of our members did not, and those that did, some
19 abandoned them officially when the new rules came out in
20 1998, going to a 40-hour workweek.

21 So, we have a large majority of our members that
22 are now abiding by the 8-hour day rule, or trying to do a
23 10-hour alternative workweek schedule under the rules of
24 AB 60.

1 The draft interim wage order, we have a couple
2 questions on. "Alternative workweek schedule," to us, is
3 very confusing and troubling. When we read the
4 Department of Labor Standards Enforcement memo, we get
5 the impression that perhaps we need to designate days,
6 "You're going to work 10 hours on Monday, 10 hours on
7 Tuesday," but nowhere else do we get that guidance. So,
8 we're wondering, can we just have a schedule that says,
9 "You're going to work three 10's, and given that week,
10 you know, those three 10's may fall on a different day of
11 the week"? And we would appreciate guidance with that.

12 Also in the draft wage order, you say that
13 employees are permitted to move from one alternative
14 schedule to another. And I'm not sure exactly what kind
15 of flexibility that provides us. So, further guidance on
16 that, whether it can be within the same week, whether
17 they need to do a vote every week if they want to change
18 from one week to the next, to go from one alternative
19 schedule to another.

20 We'd also like clarification, as many others
21 have said, on the seventh day. Is that consecutive? The
22 Labor Standards Enforcement folks have an opinion, but
23 guidance from you would be great.

24 The draft wage order also, as I said, fails to

1 address the healthcare industry. And I understand you'll
2 be looking at them as a whole later on. We are concerned
3 with what we're going to do in the interim, though,
4 because, as I said, most of our members do not fall into
5 the crafted-out exemptions that were in AB 60.

6 I have been asked by members of the Commission
7 and others, "Well, what did you do before 1997?," and
8 that's a critical and important question. Well, our
9 members lived in an entirely different world. Home care
10 has changed so dramatically over the past couple years
11 that it's almost not a valid question.

12 In 1997, Medicare was completely changed by the
13 Balanced Budget Act. And it's important to note that
14 home health is paid for -- excuse me -- Medicare pays for
15 79 percent of home health in the state, so that the
16 changes that made a 20 percent cut in pay were a dramatic
17 change in the way care is delivered. In addition,
18 MediCal pays for 4 percent of all home health in the
19 state. Those reimbursement levels are at the same that
20 they were in 1994. And neither of these two payer
21 sources accounts for overtime.

22 In 1997, we were not an industry in crisis. In
23 the past two years, 235 home health agencies have closed.
24 This represents 71 percent of the health facilities that

1 have been closed in the state in the past two years. We
2 went from a high of 1,400 agencies; we now have 880.
3 This is in the face of policy makers trying to implement
4 measures that move people from institutions to the home
5 and community-based settings. On top of all that is the
6 nursing shortage.

7 I've taken up too much time already. I'd rather
8 have you hear from my members. I have a home health
9 provider as well as a hospice provider. We'll start with
10 Marianne Ward, who is a licensed vocational nurse, and
11 she's from Interim HealthCare, and then we'll go to Holly
12 Swiger, who is a registered nurse, and she's from Vitas
13 Hospice.

14 MS. WARD: Good afternoon.

15 Well, in order to honor Chairman Center's
16 request and not to duplicate my testimony, I've rewritten
17 it so that I can be succinct in what I'd like to say.

18 The alternative -- and I am going to address the
19 draft interim wage order, Item 5, alternative workweeks.

20 In home health, there is nothing regular about a
21 scheduled alternative workweek. Home health is a
22 delivery of care to patients requiring services on a 24-
23 hour-a-day. Their admission to service varies from the
24 time of the day that they come into service with us. And

1 Kerry had stated, the way the law is written, it does
2 indicate the alternative workday has to be identified as
3 a Monday, Tuesday, Wednesday, Thursday. And in home
4 health, that is not possible.

5 An example I can give is a patient that gets
6 hospitalized, or has to have surgery. That alternative
7 workday for that particular staff of nurses is null and
8 void. Those people are out of work. We need to place
9 them with other patients. And so, there's nothing
10 regular in that regard.

11 It's an agency or it's an industry that's been
12 financially chiseled. Again, Kerry covered that quite
13 well. We used to be able to offer staff flexible hours.
14 And the disruption that the 8-hour workday causes really
15 impacts not only individual lives, as you've heard time
16 and time again testified today, but it also affects the
17 disruption in the life of the patients that we're caring
18 for in their homes.

19 It impacts our ability to recruit and retain
20 employees and nurses in this particular industry. And,
21 yes, there are labor boards and there are other
22 organizations out of state. It would be great if
23 California could hang onto its professionals here.

24 And I would also like to invite any member of

1 this Commission to come and see a 24-hour home health
2 patient and see how the delivery of care is provided, and
3 talk to the employees that are providing that care and
4 get the information firsthand. My employees and my
5 patients are eager and anxious to testify when and if the
6 committee should decide that, you know, the healthcare
7 industry will have a carved-out time to be researched and
8 reviewed. And I look forward to being a part of that
9 opportunity.

10 And thank you so much for your time.

11 COMMISSIONER CENTER: Thank you.

12 MS. SWIGER: Hello. My name is Holly Swiger,
13 and I work for Vitas Healthcare Corporation. We're a
14 large provider of hospice services. In fact, we provide
15 care to over 1,000 people who are dying in California
16 each day.

17 I'm extremely concerned about the impact of AB
18 60. You see, when people are dying, there's a lot of
19 change, loss, and confusion that happens in their lives
20 at this time, both for the patient and the families. And
21 our goal is provide a compassionate environment with the
22 greatest continuity of care as possible to kind of smooth
23 out this very rough time. We address the patient and
24 family's needs, both physically, psycho-socially,

1 spiritually, and we do that with a team of providers.
2 So, we employ physicians, we employ nurses, social
3 workers, chaplains, home health aides, homemakers; we
4 have a cadre of volunteers that work for us.

5 People want to remain home. And in order for
6 hospice to assure this, we have our interdisciplinary
7 team that not only provides visits and manages the care,
8 but we also then have 24-hour on-call staff, and we also
9 provide up to 24 hours of shift care when necessary.

10 The problem is, people don't die according to
11 the clock. And if a nurse or social worker or home
12 health aide or chaplain are out at that bedside, and the
13 patient is at a point where they're actively dying, we
14 don't want them to look at their watch and say, "My shift
15 is over; it's time to go home." This is extremely
16 intimate care that occurs when someone is going through
17 this. And we want staff to be allowed to make the
18 decision of being able to stay there and then adjust
19 their workweek as necessary.

20 When it's a 24-hour situation, where we have 24-
21 hour care in, the 12-hour shifts work much better, on
22 behalf of the patient and families, because, first of
23 all, again, you only have two different people coming in
24 there to provide this care, instead of three. And if we

1 do have the three, we have to change that late at night,
2 and then again early in the morning, disrupting, again,
3 the rest of the patient and family, which is so vital.

4 I just had a chaplain stop me in the hallway
5 yesterday that said, "What am I going to do? I can't --
6 I don't know how to work this way, now that we have this
7 8-hour limitation, because I'm supposed to be fitting
8 into the family's needs, and I can -- you know, I've got
9 families that work, and I can only reach them at night.
10 But I may get a call through tonight, or I might not get
11 a call through. If I get a call through, it's an extra
12 hour. So, do I cut my day back, and then may not get my
13 full amount of pay today, or do I go ahead and just know
14 that I'm going to have that overtime, and therefore cut
15 into the charity care of our other patients?"

16 With the increased healthcare staffing shortages
17 in California that you've heard about all day today, this
18 is a real important perk that we can provide our staff so
19 that they can balance not only the work environment, but
20 their home environment as well.

21 And so, I really urge you, on behalf of the
22 staff, that not only are they allowed to do that
23 personally, but also be allowed to provide the care that
24 they were called to provide when they come to provide

1 hospice.

2 Finally, as a provider of care, I'm very
3 concerned about the overtime cost. For our organization
4 alone, we're looking at over \$600,000 a year as a result
5 of this. And this is very difficult when we are paid a
6 flat rate per day to cover all the costs, labor,
7 medications, durable medical equipment, whatever that
8 patient needs. What I'm concerned is going to happen
9 with hospice providers is that we'll be forced to
10 decrease the continuity of care, we'll have to put limits
11 on the charity care that we now provide and are so proud
12 of, or we'll have to transfer those patients to
13 hospitals, at a time when the patient and family would
14 prefer that they stay at home.

15 So, to return to overtime after 8 hours in a day
16 creates a great hardship on our patients, family members,
17 staff, and hospice programs. There's no way to schedule
18 the death of a patient. And many hospice staff members
19 would not fit under our definition of a regularly
20 scheduled alternate schedule. So, we really request that
21 we have a permanent exemption for hospice so that we can
22 provide the care that we need to.

23 Thank you.

24 COMMISSIONER CENTER: Thank you.

1 Any questions?

2 (No response)

3 COMMISSIONER CENTER: Thank you.

4 Now Robert Tollen, Melanie Loya, Mary West
5 Piowaty.

6 Yeah, we need to really reduce testimony because
7 we have a duty to vote on our order here, and if we're
8 going to make amendments, it make take a while. We can
9 have Andy start enforcing the law here.

10 MS. PIOWATY: Hi. It is easier to testify
11 earlier in the day; you don't feel so repetitive.

12 My name is Mary West Piowaty. I live in
13 Susanville, California, northeastern California, in
14 Lassen County. I've been a respiratory therapist for 26
15 years. I've worked 8 hours, 10 hours, 12 hours, and in a
16 rural hospital we work on-call. I've worked in 8-bed
17 hospital, 400-bed hospital. I'm presently in Susanville
18 in a 26-bed rural hospital.

19 Employees in a rural hospital are required to
20 cross-train in multiple departments and must possess a
21 large array of skills. Compensation cannot compete with
22 the large metropolitan hospitals. Reno's our closest
23 large metropolitan hospital, which is out of state. It's
24 90 miles away. Or this rural hospital has trouble

1 competing with state prisons. We have two in Susanville.
2 So, retainment is very difficult in our profession. It's
3 very difficult to get qualified professionals in rural
4 areas. We use a lot of mid-level caregivers, midwives,
5 family nurse practitioners, and PAs, and it's very
6 difficult to get physicians, so they fill in.

7 At Lassen Community Hospital, we -- both the
8 employees and the management -- have liked the 12-hour
9 shifts. It's been beneficial for staffing needs,
10 stability, and retention. It's been beneficial for
11 patient continuity and personal and family time off.
12 It's resolved a lot of our staffing difficulties.

13 I testified twice here in Sacramento in favor of
14 AB 60 for Wally Knox. The reason I was in favor of daily
15 overtime is that we don't staff our ancillary departments
16 at night, lab, X-ray, and respiratory. We go on-call. I
17 was a part-time worker. I'd work long days, then be
18 worked some long nights -- never hit 40 hours; therefore,
19 never get compensated. So, yes, I was in favor of it.

20 But I now ask you to listen to the testimonies
21 and make good judgment for the exceptions and the
22 alternative work schedules. I'm here to ask you to allow
23 us to continue working 12-hour shifts with the waive of
24 overtime after 10. That's what we've been doing. We

1 like it, and it seems to work for us.

2 As caregivers, we feel a 12-hour alternative
3 work schedule benefits not only our patients, but our
4 personal lives.

5 I ask you that you look out for the California
6 worker, especially the female worker, who the majority
7 are in the medical field, is females.

8 And thank you very much.

9 COMMISSIONER CENTER: Thank you.

10 Questions?

11 (No response)

12 MS. LOYA: Good afternoon. My name is Melanie
13 Loya. I'm a registered and licensed respiratory care
14 practitioner at Mercy General Hospital here in
15 Sacramento. I've been working as a respiratory therapist
16 for 18 years.

17 In 1988, we willingly pursued and voted for
18 flexible work hours of 12-hour shifts. We did not ask --
19 the management did not ask us; we asked them. We
20 strongly protest regressing back to 8-hour shifts, mostly
21 for the reasons you guys have already heard today. And I
22 won't go back into it.

23 On a personal note, if I go back to 8-hour
24 shifts, I either have to put my daughter in daycare or I

1 never see my husband. There are people who are going to
2 school full-time to finish bachelor's and master's
3 degrees that will not be able to finish them if they have
4 to go back to going to work 8 hours a day, five days a
5 week.

6 On another note that may or may not have been
7 brought up, Sacramento has smog days, smog alert days.
8 Working 12-hour shifts, we are on the road only three
9 days a week. We are also on the road before the mass
10 crush that hits Highway 50 and Interstate 80. We're off
11 the road before the mass commute to and from work.

12 The other thing that was brought up is we work
13 in a life-and-death situation every day. Christmas Eve
14 day, we had four Code Blues -- that means cardiac or
15 respiratory arrests -- before noon. You need those extra
16 days off a week to help regroup yourself and focus back
17 on what your life is.

18 It's easier for our night shift people to work
19 three nights a week full-time than to have to do five
20 nights a week full-time.

21 In our department, to compensate for the loss of
22 4 hours a week in the pay period, they have given us a
23 differential so that we lost no pay. Some hospitals opt
24 to keep their full-time listing. We actually are listed

1 as part-time, but we do get paid to compensate for the
2 loss of the pay. We do have shift differentials between
3 the night shift and the day shift to encourage, retain,
4 and recruit seasoned, experienced respiratory therapists.
5 It has been brought to my attention that no less than
6 four people are threatening to quit if we have to go back
7 to 8-hour shifts. If that happens, a department that is
8 already under-staffed will be greatly affected.

9 I have a petition here with 100 signatures from
10 respiratory care practitioners at Mercy Healthcare,
11 Sacramento. There's been another 50 that have been faxed
12 in from other Mercy Healthcare facilities to the
13 Commission. We ask you, we implore you, please let us
14 make the choice to work 12-hour shifts. Please continue
15 for us to be exempt, respiratory care practitioners and
16 other healthcare workers.

17 Thank you.

18 COMMISSIONER CENTER: Thank you.

19 We've got Randy Clark, Steve Harvey, Mary
20 Gonzales. And if you don't have any additional new
21 information, please be very brief.

22 MR. CLARK: Yes, sir. It'll be very brief.

23 My name is Randy Clark. I'm the president of
24 the California Association for Respiratory Care. I'm

1 also a department manager at a large hospital in Modesto,
2 and I represent 82 licensees at that facility.

3 As I've been hearing, you've already heard lots
4 of testimony through the day, and I believe I've heard
5 from you that the healthcare industry will be carved out
6 for another discussion at another time. So, my question
7 would be, what is your timetable?

8 COMMISSIONER CENTER: I don't think we've said
9 that. It was asked if we had the authority to do that.
10 By July 1, we're looking at the nursing exemption.

11 MR. CLARK: Okay. Okay. The question would be,
12 at what time would all of us -- which, I guess, there's
13 17,400 respiratory care practitioners in this state and
14 280,000 licensed registered nurses in this state -- when
15 would we know if that exemption's going beyond July 1 or
16 not?

17 COMMISSIONER CENTER: Well, when we have a
18 hearing and then -- and vote on it. That's when we will
19 know.

20 MR. CLARK: Okay. I guess that was my question,
21 sir. Mr. Chairman, when would that hearing be?

22 COMMISSIONER CENTER: We have not got to that
23 point. Part of our problem, we have several other
24 industries we have to review too.

1 MR. CLARK: Okay.

2 COMMISSIONER CENTER: And if we open up separate
3 wage boards on other industries, we have a lot of things.
4 And we have to sit down with our staff and look at the
5 available schedule. So, we do not know right now.

6 MR. CLARK: Okay. That concludes my remarks.
7 Thank you.

8 COMMISSIONER CENTER: Thank you.

9 MR. HARVEY: Hi. My name is Steve Harvey. I'm
10 a respiratory care practitioner at John Muir Medical
11 Center. And I just want to go on record as saying I
12 represent 50 respiratory care practitioners at my
13 facility that all wish to work 12-hour shifts and want to
14 stay on 12-hour shifts.

15 Thank you.

16 COMMISSIONER CENTER: Thank you.

17 How about Connie Delgado Alvarez, Charles
18 Skoien, Jr., Michael Arnold, Ellen Bair, and Kimberly
19 Martin Pickard?

20 MS. ALVAREZ: Well, I guess I should go ahead
21 and begin. Hi. I'm Connie Delgado Alvarez, with the
22 California Healthcare Association. And I want to be very
23 brief for you today, since we've gone on for a little bit
24 of time.

1 I first want to support the statements that were
2 made by the advanced practice nurses. And this is a
3 critical area for our hospitals, as they do provide a
4 tremendous support to the whole function of the hospital.
5 And in that regard, we have submitted some draft language
6 for your review. You should have received a copy, I
7 believe, yesterday. And they just -- the main thrust of
8 those -- of those draft -- of that draft language deals
9 with the flexible work arrangements, the advanced
10 practice nurse issue, and the regularly scheduled
11 alternative workweek.

12 So, I understand we'll be continuing on with
13 this discussion, so I look forward to working with you in
14 the next two weeks, before I leave.

15 COMMISSIONER CENTER: Thank you.

16 Mr. Neff?

17 MR. ARNOLD: Michael Arnold.

18 COMMISSIONER CENTER: Oh.

19 MR. ARNOLD: No problem. Michael Arnold,
20 representing the California Dialysis Council. I've
21 passed out suggested changes to the portion of the
22 interim wage order dealing with alternative workweeks.

23 I'm here representing a group of dialysis
24 facilities in the State of California. Dialysis

1 facilities, obviously, treat dialysis patients. Dialysis
2 patients dialyze three times a week for three or four
3 hours per day. Dialysis facilities have implemented a
4 12-hour workday so that their patients can be
5 appropriately seen. On Monday, Wednesday, and Friday, a
6 dialysis clinic will open at 6:00 a.m. and, generally
7 speaking, will close 12 hours later, at 6:00 p.m. On
8 Tuesday, Thursday, and Saturday, they'll open at 9:00
9 a.m. and then close at 9:00 p.m. And in that way, the
10 staff is happy, the patients are happy, and the dialysis
11 facility can deliver the care most appropriately to the
12 patients.

13 If -- I guess the entire industry right now
14 needs some guidance from you folks. And everybody has
15 said that. If you really want people to be able to
16 implement a 12-hour day now, you need to say that. If
17 you don't, that's fine, but if you do, you need to say
18 that, or else folks aren't going to do it, because what
19 they worry about is that if they implement a 12-hour day
20 now and they are fair with their employees -- in other
21 words, the employees do not have a reduced take-home pay
22 as a result of the implementation of the 12-hour day --
23 that if that 12-hour day then goes away on July 1, will
24 the regular rate of hourly pay that they were giving

1 their employees on a 12-hour then become that which is
2 used for purposes of calculating overtime after July 1?
3 So, you need to solve -- you need some people some
4 guidance here. And until you do, we're going to be in a
5 giant upheaval.

6 Most of the folks in the dialysis industry have
7 gone back to 8 hours of straight time with 4 hours -- 4
8 hours of overtime. That's bad for the employees. The
9 employees don't like it because it makes it difficult for
10 them to calculate their benefits, and also, because if
11 they move on to some other job, they're worried that they
12 will be making that move based upon a lower salary than
13 they were getting when they were paid pursuant to a
14 blended rate for the full 12-hour day. It's bad for the
15 employers because they have to make all these goofy
16 calculations that they didn't have to make when they were
17 just paying straight time for the full 12 hours.

18 So, I have three suggestions in terms of your
19 wage order. If you really mean that -- if you really
20 want people to implement a 12-hour -- or to be able to
21 implement a 12-hour day after July 1 of 2000, you ought
22 to say that so that -- so that this Section 5 would say
23 "prior to 1998," and then -- or -- and insert the words
24 "or after July 1, 2000," so people realize that that's

1 what you're talking about.

2 Secondly, I think that you should make it clear
3 in your Item 5 that you're talking about both those who
4 are continuing a 12-hour day that was voted upon prior to
5 1998, and those who implement a new 12-hour day after
6 July 1, 2000, if that's what you agree that you want to
7 do.

8 And then, lastly, you need to give some comfort
9 to employers who implement this 12-hour day for this
10 period of time, so that if, in fact, on July 1, something
11 happens by virtue of court order or inaction of this
12 Commission, that they are not put at a disadvantage at
13 that point in time and that they're permitted to go back
14 to an 8-hour day plus overtime, based upon the salary
15 that would otherwise have been in effect.

16 So, those are our recommendations.

17 COMMISSIONER CENTER: Thank you.

18 Any questions?

19 (No response)

20 COMMISSIONER CENTER: Thank you.

21 MR. ARNOLD: Thanks very much.

22 COMMISSIONER CENTER: I have one more, Kathryn
23 Rees -- I guess the last healthcare. She just came in
24 and signed the card; she was late.

1 MS. REES: Well, I was listening for a long time
2 on the box, though.

3 COMMISSIONER CENTER: Okay.

4 MS. REES: Kathy Rees, representing the
5 California Assisted Living Facilities Association. For
6 those of -- some of you who know me, this is not a realm
7 in which I normally work. But this particular client is
8 in that continuum of providing direct care to residents.

9 They're not nursing homes, they are not
10 hospitals; they are the continuum in between. They are
11 for primarily the frail elderly or the dementia Alzheimer
12 patient. They are for those individuals who need
13 assistance in their day-to-day lives, their activities of
14 daily living, and some oversight, sometimes in reminding
15 them how to take their medications, how to get themselves
16 dressed, how to get themselves bathed. The one thing
17 that they have totally in common with -- with other kinds
18 of facilities such as nursing homes and such as hospitals
19 is that they do have this 24-hour, round-the-clock kind
20 of care that is required.

21 I will give you an example myself. I'm an adult
22 child with a set of two parents living with me with
23 advanced cancers, and I have to put them somewhere soon.
24 And they want to go somewhere soon. They do not belong

1 in a nursing home.

2 And one of the things that has made the assisted
3 living industry so critically attractive to people like
4 me and to people like my parents is that they have the
5 comfort of being able to go into a safe and secure
6 environment that's very home-like and know that they have
7 qualified people that are there to attend to their needs.
8 And one of the reasons they go there is because they
9 don't want to be in a nursing home, but at the same time,
10 they want to know that there's someone there 24 hours to
11 make sure that their needs are met.

12 I'm not quite sure how this industry is fitting
13 into either this draft wage order or, quite frankly,
14 whether it fits into Wage Order 4. We're very confused.
15 And so, I would only echo some of the remarks that Mike
16 Arnold has made and that many of the speakers before me.
17 We would hope that the imposition of the 8-hour day on
18 these folks, who have not necessarily been doing 8-hour
19 days -- they've been doing a variety of hours, 12 being
20 very attractive for all the reasons that everybody has
21 cited today -- that's something in common that this
22 industry has with others. And it has more to do with the
23 continuity of care that's provided, as well as many of
24 the -- the employees' satisfaction of working in this

1 environment without disruption. And frankly, many of the
2 employees enjoy the arrangement of being able to work a
3 finite number of days a week and have a finite number of
4 days a week that they do not work.

5 So, again, I would ask, in your deliberations,
6 that we work together and try to evaluate what to do with
7 this particular setting.

8 Again, I'm a little bit new at some of this, and
9 some of the people I represent are very confused about
10 where they sit, what they ought to do, and how we ought
11 to handle it. We have fought very hard for many years --
12 some years ago, I represented the Alzheimer's Association
13 -- and to have found an approach for Alzheimer's and
14 dementia patients to go, in addition, that is suitable to
15 their needs, not the nursing home, has been a very long,
16 hard, uphill battle.

17 And the watchword of the assisted living
18 movement and the assisted living facility is flexibility
19 to be able to provide care. And that comes in terms of
20 flexibility in staffing.

21 So, I would conclude with we'll look for your
22 guidance and your assistance, because I have a hunch
23 we're going to need it.

24 COMMISSIONER CENTER: Thank you.

1 Okay. James Neff and Robert Janes -- Jones --
2 excuse me, and Tom Cadell.

3 MR. JONES: Am I the right Robert Jones? I just
4 wondered.

5 COMMISSIONER CENTER: Yeah, we're off healthcare
6 right now.

7 MR. JONES: Yeah. I'm not healthcare.

8 COMMISSIONER CENTER: We're on to motion
9 pictures and computers.

10 MR. JONES: Okay, great.

11 COMMISSIONER CENTER: And James Neff is first.

12 MR. NEFF: Mr. Chairman and members, my is Jim
13 Neff. I represent the Motion Picture Association of
14 America, California Group, which is home to the major
15 motion picture studios and television productions.

16 We have been in discussions with the staff and
17 with others regarding the impact of this interim wage
18 order. And we are now sufficiently convinced that
19 Section 7 of your wage order and Section 8 of the bill
20 do, in fact, provide language that essentially will not
21 change any of the existing collective bargaining
22 agreements within the entertainment industry.

23 We have 27 collective bargaining agreements with
24 -- that covers roughly 40,000 people behind the camera,

1 and we're just hopeful that the language that's in your
2 wage order in Section 7 will, in fact, remain in that
3 order.

4 And that's kind of my comments. Thank you very
5 much.

6 COMMISSIONER CENTER: Thank you very much.

7 MR. JONES: Good afternoon, Chairman Center and
8 commissioners. My name is Robert Jones. I'm with the
9 firm of Jones Durant, and we're here today representing
10 the Northern and Southern California Chapters of the
11 National Association of Computer Consulting Businesses.

12 We -- I provided materials to all of you with
13 our specific requests, and we have a very specific
14 request at this time.

15 The interim wage order, we believe, is going to
16 have a very significant impact on the high-tech industry.
17 And it's going to have that impact because of the salary
18 basis test, which is now going to be written into the
19 wage order. I know that there's some disagreement, among
20 a number of us in the legal profession anyway, as to the
21 continuing -- the continuing viability of the prior wage
22 orders with respect to the administrative and -- excuse
23 me
24 -- the administrative, executive, and professional

1 exemption. But specifically in the law, under Section
2 21, it provides that until this Commission acts to adopt
3 a wage order, that we will continue to operate under the
4 prior wage orders, and that's what we -- 4-89 -- and
5 that's what we've been continuing to do, which provides
6 for the remuneration test.

7 To be more specific, the enactment of this
8 proposed order will immediately remove the current exempt
9 status for all highly paid computer professional
10 consultants in California. This -- I have checked with
11 the industry, and this is somewhere around 100,000 people
12 who work on an hourly basis, all of whom are paid in
13 excess of \$27.63 an hour.

14 If the Commission acts today to put the interim
15 wage order into effect with this provision that adopts
16 the Labor Code section on the administratively exempt
17 salary test, we will have to notify -- and we're prepared
18 to do that as soon as possible, which brings me to
19 another question as to what the implementation date is,
20 which is one of the things I understood would be
21 considered here today -- but we're going to have to
22 immediately notify the computer professionals in the
23 State of California who are working on an hourly basis
24 that they cannot work any hours in excess of 8 in a day

1 or 40 in a week without written authorization from the
2 employers who find these locations for them to work in
3 the high-tech industry.

4 If, in fact, we do that, they will not be able
5 to work any hours in addition to that because the
6 contracts under which they work are fixed contracts for
7 fixed rates per hour. That means that there will be no
8 money to pay them the time and a half under those
9 contracts, unless all those contracts are amended.

10 Now, this isn't a new problem that we first --
11 that we -- this problem, the salary basis test, is
12 something that we ran into ten years ago under federal
13 law with the Fair Labor Standards Act. And Congress
14 amended the law to create a specific exemption for
15 computer professionals. And what I've provided to you in
16 the information we gave to you -- and I have revised it a
17 little bit -- is an exemption for computer professionals
18 which we believe should be written into this order.

19 And I'll get to whether you can do that or not
20 in a moment, because I'm sure there's some disagreement
21 on that.

22 But what we did was we took the exact same
23 language that specifically exempts computer professionals
24 making over \$27.63 an hour and creates that specific

1 exemption, which is exactly the same as the federal
2 exemption for computer professionals.

3 The change that I made in the language was that
4 I -- the only change in the language that I want to
5 provide to you -- is we took out the primary duties test
6 and put "whose duties are for more than one half of their
7 time," just to avoid any problem that would have to do
8 with trying to -- the federal law, of course, uses the
9 primary -- primary duties test.

10 But the rest of it is that same as Exhibit 4 of
11 the information I provided to you -- I think it's Exhibit
12 4.

13 If, in fact, this is enacted before we can get
14 an exemption adopted for these people, this is going to
15 have a very significant impact on the high-tech industry
16 in California. There are ways that the high-tech
17 industry in California could have this work done outside
18 California, because it's high-tech work. It can be done
19 by companies who are located outside California who'd do
20 it by way of modem and that sort of thing. There are
21 also going to be some -- some other reasons for the
22 companies to have that work done by their facilities
23 outside the state. That's the large companies.

24 The small companies, the entrepreneurial

1 companies, in California that rely very heavily on these
2 hourly employees are going to have a very real problem in
3 getting their products done, because the people who work
4 on these projects have to have some continuity in being
5 able to work whatever hours they need to work to get it
6 done. And that's the reason they're paid such high
7 salaries.

8 And by the way, the \$27.63 is not even near what
9 the average salary is or the average hourly rate is for
10 these employees. It's more around \$70 or \$80 an hour.
11 With some that I've been dealing with recently, they were
12 at \$120 an hour.

13 Now, I understand -- and so, what we're asking
14 you to do is to adopt the exemption. And I'm asking you
15 to do that under 515(b)(2) -- or (b)(1) -- I'm sorry.
16 And I know that there's an opinion from the Attorney
17 General's office
18 -- or at least I've heard there's an opinion -- I haven't
19 been able to read the Attorney General's logic on this --
20 that you can't adopt this exception without a wage board.
21 I don't think that that's correct. And the reason I
22 don't think that's correct is because we're asking you --
23 we're not asking you to adopt an exemption under the
24 provisions that -- I think it's 1178. 1178 is the

1 provision that provides for a wage board. We're asking
2 you to adopt an exemption under 515(b)(2) -- or, excuse
3 me -- 515(b)(1), which parallels that language, but has a
4 sunset provision and makes absolutely no reference to any
5 wage board.

6 In addition to that, when you adopt these
7 orders, 517, under which you're adopting these orders,
8 specifically states that they can be done without
9 convening wage boards, period, and then goes into it
10 shall include some other actions.

11 So, that's the position that we have. We
12 respectfully disagree on whether or not it can be done.
13 If the Legislature had wanted to require wage boards to
14 adopt 515(b)(1), they didn't need to write it in there.
15 They could have relied on 1178 and gone with that
16 process.

17 So, we would request that you adopt this.

18 If, however, it continues to be the position of
19 the board that you cannot act to adopt this exemption to
20 make it the same as the federal exemption to avoid this
21 problem, then we would ask that you act as expeditiously
22 as possible to create -- or to appoint a wage board so
23 that we can get this done quickly, because it's going to
24 have a very significant impact in the interim.

1 The final issue is, the one thing I haven't
2 heard discussed here today is the effective date, even
3 though that's part of the agenda. And if you are going
4 to adopt an interim wage order, we're going to need some
5 time to make sure that all the employees and people in
6 the industry are notified that -- of this loss of
7 exemption. And we would hope that you would make the
8 effective date -- at least give us until the end of next
9 month to make the adjustments that we need to make in
10 order to prevent people who are making \$90 an hour
11 finding themselves in the situation where they've
12 inadvertently worked overtime, and the people who are
13 employing them are going to be taking significant losses
14 because of that.

15 And I'm here to answer any questions you may
16 have.

17 COMMISSIONER CENTER: Go ahead, Barry.

18 COMMISSIONER BROAD: I appreciate your
19 testimony. To bring this down to sort of childhood
20 parables, I'm afraid today we've got a lot of Chicken
21 Little and not enough of the Little Engine that Could.

22 And it seems to me that, one, these people could
23 be paid on a salaried basis. I mean, I know that in my
24 office when you visited me, that was sort of mission

1 impossible, and you indicated to me that other than the
2 fact that they must meet a salary test, they would
3 otherwise be exempt under California law. So, it seems
4 to me that their -- your contractual relations could be -
5 - they could become salaried employees --

6 MR. JONES: Well --

7 COMMISSIONER BROAD: -- without this sort of
8 end-of-the-world scenario occurring.

9 MR. JONES: Well, they actually -- I didn't mean
10 to --

11 COMMISSIONER BROAD: No, go ahead.

12 MR. JONES: I guess I did mean to interrupt you.
13 I'm sorry.

14 COMMISSIONER BROAD: No, that's fine.

15 MR. JONES: Actually, if we -- we can make them
16 salaried employees, but we can't make them salaried
17 employees under federal -- under the federal precedents.
18 And the federal law is -- I've interpreted -- you know,
19 as I've read the law, if they're salaried employees,
20 they're not going to work more than 8 hours in a day,
21 period. Why would they work additional hours when they
22 can be paid on an hourly basis to work these hours
23 anyplace else?

24 This is -- here's a situation. I have a company

1 who needs a project done, and they say, "We'll pay \$100
2 an hour to have this project done," and we have a person
3 who will work this for \$80 an hour. And that's our
4 margin and covers our -- and covers the cost, the \$20.
5 If we tell this -- if this person works 16 hours a day
6 for a week -- and I'm not saying that's impossible --
7 they'll receive 16 hours at the hourly rate. If they're
8 salaried, why would they agree to work anything in
9 addition to 8 unless they're paid a premium for that?
10 And they're not going to be able -- we are not going to
11 be able to pay them an hourly bonus premium for that,
12 under federal precedents.

13 COMMISSIONER BROAD: Well, except that I -- I
14 guess I'm confused, though. I mean, I imagine that
15 employers can build in any number of incentives for
16 people to finish work at an earlier point, you know,
17 performance bonuses or any other thing that -- that
18 controls costs, or to say that this work shall be
19 performed by a certain date. I just -- in talking --
20 well, let me put it this way -- I sort of came away from
21 our discussion feeling like these are the same guys who
22 brought us the Y2K crisis. And it's perhaps a crisis of
23 just the same magnitude, you know, that's sort of -- it's
24 a lot of -- a lot of, you know, stress over something

1 that can be relatively easily resolved.

2 And I thought about it a lot after our
3 discussion, and I really think that your industry should
4 come into compliance, because I believe that the
5 Commission is foreclosed by the clear language of the
6 statute by creating exemptions for people by eliminating
7 the salary test. I don't believe that we can do that,
8 statutorily. That is my opinion. I don't know what my
9 other commissioners, you know, feel here, but that is my
10 opinion, and that your remedy would have been to seek an
11 amendment -- or still is, perhaps -- to seek an amendment
12 to AB 60, but that this Commission, whether it does it
13 with wage boards or not, cannot change the salary basis
14 test that is now in the statute.

15 MR. JONES: All right. Well, I'm not asking you
16 to change the salary basis test at all, Commissioner
17 Broad. I'm asking you to create another exemption. That
18 can certainly be done with the -- with the -- under
19 515(b)(1), and it's something that's -- in fact, is
20 specifically contemplated by that. And that doesn't --
21 if that new exemption does not specifically contain a
22 salary basis test, then it is an exemption without a
23 salary basis test, because the salary basis test in the
24 law only applies to that classification that's set forth

1 in 515(a) at this point in time. There's no place else
2 in the law where there's a salary basis test other than
3 in 515(a), that I'm aware of.

4 And so, what -- and that's exactly what the
5 federal Congress did in enacting the exemption to the
6 Fair Labor Standards Act. It created a new exemption,
7 which the only part of the exemption is it exempts from
8 the salary basis test because it's created a new
9 classification which does not specifically rely or
10 specify a salary basis test.

11 California will be the only state in the union
12 where employees who work in the -- high-tech employees
13 who work in the computer industry making more than \$27.63
14 an hour have to be paid overtime, period. And that is
15 not what the intent of the legislation was, I don't
16 think, is to require \$80-an-hour employees to be paid --
17 required to either be on salary or paid time and a half.

18 COMMISSIONER BOSCO: Could I ask, does anyone
19 have an opinion over whether Section 515(b)(1) would
20 enable us to grant this exemption? I know that it's been
21 the general view today that we're not going to get into
22 these exemptions. But I'm asking specifically, legally,
23 if we had the desire to do it, could we?

24 COMMISSIONER CENTER: I'll refer that to our

1 attorney.

2 MS. STRICKLIN: Under 515(b), you could -- you
3 have the authority to make exemptions. The question is
4 what type of exemption you would be making and whether or
5 not you want to -- I mean, as a body, you want to.

6 COMMISSIONER BOSCO: No, I understand that part
7 of it. But say if we were to recognize the congressional
8 or the federal statute's exemption of these computer
9 professionals and if we wanted to simply put that same
10 exemption into being here in California, could we do that
11 without having a wage board or any other proceeding?

12 MS. STRICKLIN: I don't know that you could.

13 COMMISSIONER BOSCO: Do you know that we
14 couldn't?

15 MS. STRICKLIN: I don't know that you couldn't
16 either. I'd have to look into that.

17 It seems to me that there's nothing -- that the
18 salary requirement is there in 515(a).

19 COMMISSIONER CENTER: I think --

20 MS. STRICKLIN: And the other exemptions were
21 something beyond salary, in 515(b).

22 COMMISSIONER CENTER: Well, I think it would be
23 the position of the chair that we could not, unless we
24 determined that we could. And really, we've heard from

1 this individual. There might be a computer consultant
2 out there that enjoys overtime under the change in law.

3 COMMISSIONER BROAD: Mr. Chairman?

4 COMMISSIONER CENTER: Yes.

5 COMMISSIONER BROAD: I believe -- and, of
6 course, we can discuss this at length -- but I believe
7 that -- I was somewhat of a participant in the process of
8 this bill.

9 MS. STRICKLIN: Yeah.

10 COMMISSIONER BROAD: In fact, I had some hand in
11 drafting this section. And it was intended to make the
12 salary -- to codify a salary test and the "primarily
13 engaged" test in California law for all exemptions.

14 MS. STRICKLIN: Right.

15 COMMISSIONER BROAD: And Section (b)(1) was
16 intended to allow the Commission to create further
17 exemptions within those parameters, but only until a
18 certain date, at which point the Commission was no longer
19 legally permitted to create classes of exemptions, and
20 that Section (b)(1) did not relieve the Commission of its
21 authority or the requirement that it operate under wage
22 boards. In fact, only where the Legislature specifically
23 grants the authority to operate without wage boards may
24 the Commission operate without wage boards, as it's the

1 wage board process that makes the Commission's process,
2 insofar as it's exempt from the Administrative Procedure
3 Act, constitutional in the sense that it grants the
4 public procedural due process. And that's, I think, a --
5 based on earlier litigation involving the Commission.

6 So, I mean, that's my understanding of it. And,
7 you know, I could be wrong, but I believe that that is
8 accurate.

9 MR. JONES: Mr. Chairman, I think that the
10 statute -- we're ready to -- you know, if this enacted,
11 we're certainly ready to defend it. And I think that the
12 law is specific, no matter what the intent was. 515(a)
13 specifically deals with the duties that are currently
14 termed executive, professional, those -- administrative,
15 those duties. I mean, it's specific.

16 And the other thing is that, while there is some
17 prior law on wage boards and what they're there for, that
18 law would -- and Commissioner Broad is right -- that law
19 specifically says that the -- AB 60 says, "We're making
20 specific exemptions." And so, if, in fact, the law is
21 still good law, then the Legislature didn't have the
22 authority to make those exemptions.

23 But if you look at 517 -- and that's the only
24 authority I found for this board to enact even this

1 interim order, because what you are, you're -- I don't
2 know what the authority is for this board to adopt an
3 interim order, because the legislative act itself says --
4 the only way I see that you can adopt any order is under
5 517. And 517(a) specifically says, "The Industrial
6 Welfare Commission shall, at a public hearing to be
7 conducted by July 1, 2000, adopt wages, hours, and
8 working condition orders consistent with this chapter
9 without convening wage boards, which orders shall be
10 final and conclusive for all purposes," period. It then
11 goes on to say that those hearings shall include certain
12 things, but it doesn't say that it'll be limited to that.

13 And I think that the -- that the courts would
14 find that the -- that, in fact, this board would have
15 acted appropriately in adopting this exemption to prevent
16 this problem under 515(b)(1) and that they can do that
17 under 517 because it's specifically allowed. And that's
18 what we're asking for.

19 COMMISSIONER CENTER: Thank you.

20 Other questions?

21 (No response)

22 COMMISSIONER CENTER: If the interim order is
23 passed today, it would go into effect February 15th.

24 MR. JONES: It would be February 15th if it went

1 into effect today?

2 COMMISSIONER CENTER: If we -- if it's passed
3 today, yes.

4 MR. JONES: And could the board consider
5 extending that to the 30th? I mean, the notice was that
6 we would set that -- that the board would -- we would
7 testify about that today. So, this is -- I'm not sure
8 where the 15th came from.

9 COMMISSIONER CENTER: That's the earliest it
10 would go into effect.

11 MR. JONES: That's the earliest it would go into
12 effect. So, we would urge this board, if, in fact, they
13 are going to not act on our proposal, that we limit the
14 damage this will cause in the industry by allowing us the
15 time to correct, to at least the end of next month, 30
16 days, and that they convene a wage board on this issue as
17 quickly as possible so that we can get this addressed.

18 COMMISSIONER CENTER: Thank you.

19 MR. JONES: Thank you very much. And I'll
20 provide revised language.

21 COMMISSIONER CENTER: I have Steve Zieff, Ron
22 McKune, James Abrams, Kelly Watts, and John Zaimes.

23 We have John Zaimes?

24 MR. ZAIMES: Yes. That's me. Would you like me

1 to begin? I was the last one called, so --

2 COMMISSIONER CENTER: Oh, yeah. Whatever.

3 MR. ZAIMES: Very well.

4 COMMISSIONER CENTER: Then who wants to go
5 first? I did them in reverse order here.

6 Steve Zieff?

7 It should be Ron McKune.

8 There you go. Go ahead, sir.

9 MR. McKUNE: Good afternoon, Chair Center and
10 members of the Commission. My name is Ron McKune, and
11 I'm a consultant with The Employers Group. I am here and
12 speaking at the request of Bill Dahlman, president of The
13 Employers Group.

14 The Employers Group is an association whose
15 mission is to support the employee and labor relations
16 functions of the employer community in California. We
17 have a membership of over 4,500 -- 4,500 companies. They
18 employ over 200 -- they employ over two million people in
19 the State of California.

20 You've heard from the California Chamber of
21 Commerce and the California Employers Coalition. The
22 Employers Group concurs with their position.

23 The Industrial Welfare Commission is called to
24 review exempt status. The Employers Group asks that the

1 Commission look at all duties, including duties that
2 emanate from the duties primarily used to measure
3 exemption to meet the exempt tests.

4 And lastly, The Employers Group accepts the
5 conclusion reached by DLSE in the memo of December 23rd,
6 1999, that AB 60 does not prohibit on-duty meal periods
7 where the nature of the work requires it. We ask that
8 language formerly used in that regard again be printed.

9 Thank you.

10 COMMISSIONER CENTER: Thank you.

11 Who did I call next? Was it Jim or Kelly?
12 Kelly.

13 MS. WATTS: Thank you, Chairman Center and
14 members. My name is Kelly Watts, and I'm with the
15 American Electronics Association. I'm going to be very
16 brief.

17 We have three specific issues that we'd like to
18 address as far as clarification is concerned in these
19 draft wage orders.

20 Number one, in Section 4, which is daily
21 overtime, general provisions, in Section (A) and (B),
22 we'd like to suggest adding the phrase "in a single
23 workweek" to the end of each sentence. Our concern is
24 that if we have an employee who works the back end of one

1 week, the front end of another week, that we would be --
2 the employer would be responsible for overtime and then
3 perhaps double time.

4 And number two, in Section 9, regarding meal
5 periods, Part (B), we'd like to see a provision adding
6 that would state, "In addition, the first and second meal
7 periods may be scheduled consecutively." This would
8 allow for one full hour of a meal period rather than two
9 separate half-hour meal periods, if the employee decides
10 to do so.

11 Thirdly, in Section 5, dealing with alternative
12 workweeks, the wage order is referring to the
13 grandfathering-in provisions for existing 10-hour shifts
14 and states than, "An employee must submit a written
15 request to maintain their 10-hour shift, and that the
16 request and approval shall be made within 90 days of the
17 effective date of this order." We would like to clarify
18 that the effective date mentioned is the date that this
19 order is approved, possibly here today.

20 And those are our concerns at this point, and we
21 appreciate the opportunity to clarify these issues for
22 our members.

23 COMMISSIONER CENTER: Thank you.

24 MS. WATTS: Thanks.

1 COMMISSIONER CENTER: James.

2 MR. ABRAMS: Thank you, Mr. Chair. My name is
3 Jim Abrams. I'm with the California Hotel and Motel
4 Association. I'm here to speak with specific reference
5 to the lodging industry in California. First, by way of
6 general comment, we support the remarks and suggestions
7 and observations that were made by the California
8 Employer Coalition.

9 With specific reference to the lodging industry,
10 there are two main issues that we think, while they
11 arguably apply to all employers, are specifically germane
12 to the lodging industry.

13 The first has to do with the exemption for
14 administrative, managerial, and professional employees as
15 it pertains to part-time employees. The comment has been
16 made that -- in the position paper, if one would call it
17 that, the legal opinion from the chief counsel to the
18 Labor Commissioner -- that any part-time employee who
19 otherwise would meet the duties test to be considered
20 exempt cannot be considered exempt no matter how few
21 hours a week he or she might work, unless the salary is
22 at least two times the minimum wage or the \$1,933.33 a
23 month. And you've talked about that a great deal.

24 And with all due respect, I think there is a

1 premise here that Assembly Bill 60 somehow mandates that
2 conclusion. And I respectfully would submit to you that
3 it does not. And I think it's important that we very
4 quickly go back and revisit the whole idea of why a
5 salary was put into the wage orders, going back many,
6 many years before, which is that, one, to be exempt a
7 person has to have duties that are exempt, you have to
8 have the kind of duties that a manager, a professional,
9 or someone in an administrative capacity, executive
10 capacity, would have. And secondly, you have to be paid
11 enough so that the designation of your duties, the
12 characterization of your duties, isn't a farce.

13 And if you go back through the hearings that
14 have been held in past years regarding the various
15 changes in the wage orders, the key has always been that
16 you can't call someone a manager unless you pay him or
17 her a certain amount of money that is consistent with the
18 seriousness with which you are ascribing -- you're
19 ascribing to the duties.

20 And having said that, I -- we've now taken it
21 out of the wage board process and we've put it in
22 statute, and the Legislature has said it has to be at
23 least two times the minimum wage.

24 That never really addresses the issue, though,

1 of what you do with part-time employees. And I -- in the
2 document we sent to Mr. Baron a couple of days ago, if
3 you take the example that Mr. Locker put forward in his
4 legal opinion, he says, for example, if we have an
5 attorney who is paid \$2,000 a month and the attorney
6 says, "I only want to work part-time; I want to work half
7 a week, I want to work 20 hours a week," and the employer
8 says, "That's fine. This is a \$2,000-per-month job. You
9 want to work half a month, I'll pay you half of that." I
10 mean, one would agree that the *quid pro quo*, \$2,000 for a
11 full month's work, if we're going to cut the equation in
12 half on one side, it needs to be cut -- the equation has
13 to be cut on the other side.

14 The opinion of Mr. Locker is that this attorney,
15 who is exempt -- his duties are clearly exempt by virtue
16 of being a professional -- is now no longer exempt
17 because he's being paid on a part-time basis. And the
18 rationale for that -- and I presume that that is at least
19 part of the rationale that the Commission is relying upon
20 and voicing -- is that you cannot ever be deemed to be a
21 professional employee in terms of your duties if you
22 don't have ultimate control over your hours. And that's
23 basically what Mr. Locker says, that the quintessential
24 test of whether you are truly exercising exempt duties is

1 that you have control over your time. And if, in fact,
2 your employer says, "You're only going to work 20 hours a
3 week, 10 hours a week," or whatever, then it doesn't
4 matter that you're a doctor or a lawyer or that you're
5 paid a million dollars an hour. You can't -- you just
6 cannot be exempt. And with all due respect, I think that
7 is way wide of the mark.

8 Secondly, if you take a look at this, you could
9 say, for example -- and this comes up constantly in the
10 lodging industry -- you have a food and beverage manager,
11 for example -- and I will submit to you that there are
12 many food and beverage managers whose duties are clearly
13 exempt
14 -- and if you will, just for the sake of argument, allow
15 me that -- and these people will be paid perhaps \$60,000
16 a year. A lot of them want to work part-time. The
17 employer wants part-time because it's a 365-day-a-year,
18 seven-day-a-week operation. And so, a lot of these
19 people say, "I'd like to work, you know, 20 hours a
20 week." And the employer says, "That's fine. This is --
21 if you were working full-time, I'd pay you \$60,000, but
22 because you're going to be one of three people now among
23 whom I'm going to split this job up, you know, 20 hours
24 each perhaps, or whatever it happens to come out -- I'll

1 pay you \$20,000." And the cost is actually more than
2 that, because now you have three people who probably
3 qualify for benefits.

4 And if you take the position that because this
5 employee, who, if he were working full-time, would get
6 \$60,000, is now only working, let's say, a third of the
7 time and getting \$20,000, is no longer exempt, Mr. Broad
8 suggested that this would make a mockery of the
9 exemption. I really do -- and I mean this with respect --
10 -- I think to hold that part-time employees can never be
11 exempt, period, by definition, if they -- unless they get
12 -- unless they get at least \$2,000 -- the \$1,933.33 a
13 month, each of them, maybe two, three, or four people all
14 doing one person's job, getting, in essence, three or
15 four times what that job is worth as a whole, I submit
16 that that really makes a mockery out of what the whole
17 professional exemption was all about.

18 That -- so, we do feel that there needs to be
19 clarification and an enunciation of the fact that, in
20 fact, part-time employment, if you otherwise qualify for
21 the exemption because of your duties, is something that
22 is permitted under the -- in your interim wage order.

23 Secondly, Mr. Locker opines in his December 23
24 document -- and I say this with a lot of respect -- it's

1 an excellent document to get everybody started down this
2 path
3 -- that you cannot have any kind of in-kind compensation
4 to people and treat that as any sort of compensation in
5 judging whether or not you've met the \$1,993, or the two
6 times the minimum wage. In the lodging industry, a lot
7 of managers who, again, I would submit to you, meet the
8 duties test, they are clearly primarily engaged in exempt
9 duties, will receive free housing. And this, you know,
10 will range anywhere from \$500 to \$1,000 a month, in terms
11 of housing that they don't have to pay. And we have
12 always submitted that the value of either all or at least
13 some of the benefits that the employer pays these exempt
14 people should be entitled to some sort of a credit or
15 factoring into the calculation of whether or not the
16 employer is, in fact, meeting the two times the minimum
17 wage test. I am not submitting to you that it
18 necessarily needs to be on a dollar-for-dollar basis, but
19 it is ridiculous, for example, if I have a nonexempt
20 employee and I provide him with free housing, I can take
21 a meal and lodging credit, up to several hundred dollars
22 a month if you combine them all, against my minimum wage
23 obligations, but I can't take the same value of that meal
24 or that lodging or whatever else and credit it against my

1 \$24,000, roughly, per year compensation.

2 And I -- again, I think -- I think, with all due
3 respect to Mr. Locker, that that is something that goes
4 way beyond what AB 60 says and requires. And I think
5 it's going to start causing a lot of people in the
6 lodging industry to say to their managerial employees,
7 "That's fine, we'll pay you the \$24,000 or whatever it is
8 we're paying you, but now you are going to have to start
9 paying for your lodging and for your meals and for other
10 things like that."

11 And then, lastly, I do want to suggest that as
12 it relates to alternative workweek schedules, there is a
13 provision in your draft order that defines what a -- what
14 the term "affected employees" and "work unit" means. And
15 it says that in some cases, it can all -- go all the way
16 down to one or very few people. But that appears only in
17 the section of your wage order that relates to the
18 healthcare industry. And other people have pointed out
19 that it needs to be applicable to employers and employees
20 in all industries.

21 Those are my comments. I would like to answer
22 any questions that you might have.

23 COMMISSIONER CENTER: Commissioner Broad?

24 COMMISSIONER BROAD: Yeah. Taking them sort of

1 backwards, that test of what constitutes an appropriate
2 unit for other than healthcare, it is in the wage orders
3 that are reinstated, so, seeing that you're reading --
4 you would take our interim wage order and put it against
5 the other provisions of the existing wage orders. Then
6 that is what goes into effect, which is the same answer
7 for the question about meals and lodging. There has
8 always been a provision that allows employers to credit
9 the value of the meals of lodging. And I would direct
10 you to every one of the wage orders, and -- which
11 actually lists a room shared, an apartment, where there's
12 a couple, and so forth, the value of that that may be
13 credited against the employer's minimum wage obligation.
14 So, in fact, that issue is dealt with, is not in any way
15 affected by what we are doing today.

16 MR. ABRAMS: But may I ask, then, for
17 clarification? Then is it the position of this
18 Commission that the statement in Mr. Locker's December 23
19 opinion -- let me finish my question, please, Mr. Broad -
20 - that in deciding -- in determining whether an employer
21 has paid the \$1,993.33 per month, there can be no credit
22 -- that is his word -- there can be no credit for any in-
23 kind -- let me finish, please -- and in-kind
24 compensation, such as, for example, lodging or meals?

1 So, if your position is -- the Commission's position is
2 that taking Wage Order 5-89 as amended in 1993, plus this
3 interim order, if it's adopted as it is, if you're saying
4 that that overrides and obviates the statement in the
5 opinion that's been given to --

6 COMMISSIONER BROAD: No, I'm not saying that at
7 all.

8 MR. ABRAMS: Well, then -- then --

9 COMMISSIONER BROAD: Not at all.

10 MR. ABRAMS: -- it's either one or the other.

11 COMMISSIONER BROAD: No, it isn't, because his
12 statement -- your relief, as it were, is a deduction off
13 the cost of the employee's paycheck, not a change in
14 whether the person has exempt or nonexempt status.

15 Now, as to the first -- your first point,
16 really, again -- and I -- maybe I'm missing something or
17 maybe, with all due respect, you're missing something --
18 if the employee is a part-time manager, professional
19 that's exempt, they are exempt, correct? And therefore,
20 they can be permitted -- required by the employer to work
21 any number of hours without overtime.

22 MR. ABRAMS: Yes, but -- but your statement
23 presumes that he or she is exempt not only because of the
24 duties, but because he or she is paid at least -- let's

1 say it's \$2,000 a month, all right? It's \$1,993.33;
2 let's say \$2,000. That, under your scenario -- and I
3 listened to you in discussing this with other people --
4 is that the only way a food and beverage manager at a
5 hotel who works 10 hours a week, because that's what
6 works for everybody, can be considered exempt so that he
7 or she might work more or less hours some days than
8 others, and sometimes go over 8 hours in the day without
9 an overtime problem, is that he or she gets paid \$2,000 a
10 month and, in fact, has exempt duties.

11 And what I'm saying to you --

12 COMMISSIONER BROAD: Correct. But why do you
13 want an exemption for someone that never works more than
14 10 hours a week? You never incur any overtime cost.

15 MR. ABRAMS: But the 10 hours, Mr. Broad -- the
16 10 hours is -- it may be the general rule, but the
17 employee may, on a given day, work 10 hours, which, if
18 he's not exempt or she's not exempt, is going to be
19 overtime for two hours. Or on another -- if a person's
20 working 20 hours a week, sometimes he or she will work 22
21 hours a week.

22 COMMISSIONER BROAD: Or 32, or 42, or 52.

23 MR. ABRAMS: Well, but if you're worried about
24 the abuse factor -- and that's what I kept hearing you

1 and Mr. Rankin talking about, is the abuse -- don't throw
2 the baby out with the bath water. Build in some -- the
3 vast majority of employers in this state are not about to
4 abuse their employees. Many -- there are some who do,
5 and they ought to be guarded against, I agree with you.
6 But don't say to yourself, because a methodology of
7 providing flexibility and equity in pay may arise to the
8 level of providing some avenue for abuse means that we
9 can't go forward. Build the walls against the abuse, but
10 then recognize that if what you're doing is getting paid
11 the equivalent of \$2,000 a month, and if your duties are
12 truly exempt, but you're only working half time, you
13 shouldn't get paid on a full-time basis.

14 COMMISSIONER BROAD: Well, we have no proposal
15 of any sort before us on this issue. And so, I don't --
16 I think it's, at this point, quite premature to talk
17 about this.

18 MR. ABRAMS: Can I go back to your statement --
19 and, Mr. Center, and I appreciate your being indulgent --
20 this is critical.

21 Do I understand you, Mr. Broad, that if -- that
22 if I have a person who is an exempt employee, general
23 manager of the hotel, gets whatever he or she gets paid,
24 lives full-time on the property -- and let's assume for

1 the sake of argument that the value of the unit is \$500 a
2 month -- what you're telling me is that under Wage Order
3 5-98 (sic), as amended in 1993, I can take a credit,
4 which is -- it's a meal and lodging credit -- against the
5 \$24,000-per-year compensation I have to pay him and still
6 treat him as exempt?

7 COMMISSIONER BROAD: I believe that you should
8 discuss that with Mr. Locker.

9 MR. ABRAMS: No, sir. But with all due respect,
10 I need to -- this Commission has the ability and absolute
11 responsibility to tell people what AB 60 means. And Mr.
12 Locker is a lawyer like the rest of some of us, and is
13 out there desperately trying to interpret this for his
14 constituency, which are the employees who enforce this
15 law. But he has said, in my opinion and the Labor
16 Commissioner -- deputy Labor Commissioners in enforcing
17 it, "You must go by this rule, that if I give you a free
18 apartment, you can't take any credit for it." Now, all
19 I'm saying is I think, with all due respect to Mr.
20 Locker, that's wrong. This is the entity that needs to
21 make it clear.

22 COMMISSIONER BROAD: Well, the other problem
23 that sort of complicates that whole credit thing is that
24 -- is the fact that the current minimum wage was created

1 by initiative. And therefore, I'm not even sure that the
2 credit still remains lawful at the present time.

3 MR. ABRAMS: Then -- if that is the case, then
4 you need to make it clear that the wage and hour credit
5 in Wage Order 5-98 (sic) -- 89 -- excuse me -- is no
6 longer in place. All of that is going to start to drive
7 some very significant economic changes throughout --
8 throughout the workplace.

9 COMMISSIONER CENTER: Mr. Abrams, we're not
10 prepared to do that today, but we'll defer to legal
11 counsel.

12 MR. ABRAMS: All we can do is put the points
13 forward. Thank you.

14 COMMISSIONER CENTER: I won't go anywhere -- go
15 ahead -- I don't want to expand the debate.

16 MR. ZAIMES: Thank you, Mr. Chairman and members
17 of the Commission. My name is John Zaimes. I represent
18 a group of energy generators with facilities up and down
19 the State of California, who are typically engaged in 24-
20 hour operations. And my comments today are very narrowly
21 focused. They are focused on -- principally on the
22 alternative workweek schedule section of AB 60, and they
23 are focused in particular on an interpretation of that
24 section that has been advanced clearly by Mr. Locker in

1 his memorandum, but I believe also by the board, that
2 there is a limitation on the length of a shift, under an
3 alternative workweek schedule, to 10 hours per day.

4 And I'm going to walk you, just briefly, for a
5 moment, through a statutory interpretation that will
6 include a look not only at the statute, but at the
7 legislative history of the statute, that I hope will
8 convince you that that is an erroneous interpretation of
9 the statute.

10 And I want to qualify that by telling you I did
11 attempt to appear at the hearings in Los Angeles a month
12 or so ago. I did present this, in the form of a written
13 submission to the Commission. I was unable to stay for
14 oral testimony. I have been in communication with Mr.
15 Locker on his position on this. And, in fact, he -- it
16 was he in a recent discussion who suggested that I
17 present my comments to the Commission, because when we
18 started to talk about the legislative history, I think
19 that that caused him a little bit of pause about the
20 interpretation he had developed.

21 First of all, let me make clear that as I --

22 COMMISSIONER DOMBROWSKI: Just for time, is your
23 issue you have an alternative workweek and that you want
24 to work overtime and pay them overtime?

1 MR. ZAIMES: The issue is, we have an
2 alternative workweek in which we want to have a set of
3 12-hour shifts under the alternative workweek, on a
4 regularly scheduled basis, and we want to pay overtime
5 for the eleventh and twelfth hours under the -- under
6 that.

7 COMMISSIONER DOMBROWSKI: Okay. For time's
8 sake, we have -- we have been revising this draft, and we
9 have a basis of fact that's been prepared that we will be
10 voting on an issuing. And I think your issue is
11 addressed.

12 MR. ZAIMES: Okay. I don't know if I should --
13 if I should waive my comments, then. You're suggesting
14 it may be addressed favorably to me? Or should I --

15 COMMISSIONER DOMBROWSKI: Yes. Yes. Yes.

16 (Laughter)

17 MR. ZAIMES: All right. Lawyers are highly
18 distrustful by nature, so I wanted -- I wanted to be
19 sure.

20 Very well, then. Based on that, I'll refrain.

21 And as I said, if the Commission wants -- in the
22 absence of my oral presentation, wants to look at my
23 prior written presentation, that was submitted at the
24 time of the December 15th hearing.

1 Thank you.

2 COMMISSIONER CENTER: Thank you.

3 I think that's it.

4 Thank you.

5 MR. ZAIMES: Thank you.

6 COMMISSIONER CENTER: Connie Clendenan, Peter
7 Kellison, Alan Shanedling, and Rolf Claussen.

8 MS. ISERI: Shall I -- shall I start?

9 COMMISSIONER CENTER: Yes.

10 MS. ISERI: Chairman Center, commissioners, I'm
11 Joyce Iseri, with the California Alliance of Child and
12 Family Services. Connie Clendenan was our witness, but
13 she, unfortunately, had to leave, so I will be even
14 briefer than we would have been.

15 The issue I wish to speak about today concerns
16 on-duty meal periods. It was alluded to very briefly by
17 the previous witness for the Employers Council. We do
18 have other issues we intend to raise before the
19 Commission, but at a future date.

20 For today, though, the -- I just wanted to
21 explain the California Alliance of Child and Family
22 Services is a statewide organization of providers of care
23 for foster children, very generally. They do provide
24 services to kids also in their homes, but also, the issue

1 for today is out-of-home residential treatment services
2 provided in what are commonly called group homes for
3 children.

4 There has been a question raised about whether
5 on-duty meal periods are still allowed under the
6 provisions of AB 60 and the interim wage order that you
7 are going to be voting on today. Specifically, in the
8 letter that we have sent to the Commission, we quote the
9 relevant sections of AB 60 and the interim wage order,
10 but also the provisions of Wage Order 5-89, as amended in
11 1993, which has further elaboration and mentions the
12 issue of on-duty meal periods and makes that allowance
13 and sets out the conditions for when you can have those.

14 I can get into more detail about why on-duty
15 meal periods are important in group homes, and I would do
16 that -- I know you're short for time. But suffice it to
17 say that on-duty meal periods serve two very important
18 purposes in group homes.

19 One, they are part of the treatment program for
20 the children in care. These are emotionally disturbed
21 kids who need a very intensive, structured program, and
22 it's 24-hour residential. Meal periods are not just for
23 the convenience of the employees so that they can eat a
24 meal and have a break; they're also part of the

1 programmatic treatment given to these foster children.
2 These children need to learn how to function within a
3 family, how to act appropriately, you know, how to sit
4 down at a table and eat, and not get into fights or get
5 into assaultive behavior. The other important function
6 served by on-duty meal periods is for overnight staffing.
7 Again, this is 24-hour care. Typically, in a small, six-
8 bed group home where they're trying to simulate a family,
9 you have one staff person overnight. It's not feasible
10 to get relief staff to come for 30 minutes or 60 minutes
11 in the middle of the night so that the regular staff
12 person can have an off-duty meal. I don't think we could
13 even recruit anyone to come, say, at three o'clock in the
14 morning.

15 So, those, very briefly, are the reasons why on-
16 duty meal periods are important. My letter does go into
17 a lot more explanation about the kinds of children who
18 are being cared for in group homes, what the emotional
19 and behavioral needs are, and why meals are an important
20 part of the whole treatment provided by group homes.

21 What we're asking the Commission to do today is
22 to clarify that, yes, on-duty meal periods are still
23 allowed as an option by AB 60 and this interim wage
24 order, and in the future, when you issue a final wage

1 order, to retain that option. Those are -- that's what
2 we're requesting.

3 COMMISSIONER CENTER: Thank you.

4 MS. ISERI: Thank you.

5 MR. CLAUSSEN: Thank you, Mr. Chairman. My name
6 is Rolf Claussen. I represent the Greater California
7 Livery Association as well as I'm an owner of Barrington
8 Livery, a limousine service in southern California.

9 I'm here on behalf of all the members of the
10 association in regards to AB 60. Limousine operators
11 currently provide public ground transportation, and we --
12 the reason why we use the term "livery" is that we don't
13 provide just limousine services, but, as well, sedans,
14 vans, and bus services for clients throughout the State
15 of California.

16 In the normal conduct of business, livery
17 operators compete with various other providers of
18 transportation services, including taxicabs, van
19 shuttles, and franchise limousine companies. One major
20 factor of a consumer's decision in using our service is
21 based on price. Now, while we're -- we are regulated by
22 the California PUC Charter Party Division and they do not
23 allow us to offer or lease vehicles to a chauffeur unless
24 the chauffeur owns their own -- or has their own

1 particular license. Such arrangement is allowed for the
2 taxicab industry, the van shuttle industry, and these --
3 what we would call subcontract limousine operators. The
4 vast -- these operators, the taxicab operators and so
5 forth, do not have to require with any kind of minimum
6 wage or overtime laws because they are considered
7 subcontract.

8 In recent years, we have had an increase of
9 operators, nationwide limousine operators, coming into
10 our state that are opening up subcontract driver
11 arrangements with their chauffeurs, which basically means
12 that they are selling vehicles to the chauffeurs,
13 requiring the chauffeurs to get licenses, insure
14 themselves, and so forth, and bear the entire cost of
15 operating. By doing this, they, again, avoid the
16 requirements of meeting labor laws in regards to
17 overtime, minimum wages, and so forth.

18 The operators in our association do have
19 employees. We do comply with the current regulations
20 that
21 -- with the PUC as well as the labor laws within the
22 state. Now, since the daily overtime does not affect
23 these other operators, it does put our companies at a
24 competitive disadvantage, namely because we compete for

1 the same block of business.

2 In the -- the reason I'm talking to you here
3 today -- and I wrote this down -- I'm going to set this
4 aside here because I can really do this better this way -
5 - chauffeurs in our industry are paid on a per-job basis,
6 whereas the subcontract, as you understand, is they can
7 get a percentage of the deal and the company takes the
8 other percentage. In our industry or with our employees,
9 we pay the chauffeurs a percentage of the job that they
10 do. Now, the percentage of the job is generally
11 calculated on an hourly basis. We guarantee them a
12 certain amount of hours to do a job, and then the rest of
13 the income that they receive is from gratuities that are
14 handed to them from the clients that participate or use
15 the vehicles.

16 Now, because we don't control the volume of work
17 or when the work happens, on a day-to-day basis the
18 volume or the work fluctuates. One day a driver may have
19 one or two jobs, the next day he may have five or six
20 jobs, which translates to one day he will get 2 hours'
21 worth of pay or 4 hours' worth of pay, and the following
22 day he can get upwards to 16 hours' worth of pay.

23 Now, with AB 60, what is happening here is we,
24 as operators, have to reconsider how we assign work to

1 chauffeurs. When they lose the days of work, they cannot
2 make them up on the following days, if we follow by this
3 -- this new bill here, which, in turn, will take
4 chauffeurs that are full-time employees that do get
5 fringe benefits and so forth, and they will become part-
6 time employees. It's not something that we as an
7 industry want to see happen. It's not something the
8 chauffeurs want to see happen. But it's something that
9 will inevitably happen because we cannot afford to pay
10 overtime for employees that work only 30 hours a week or
11 40 hours a week.

12 Now, a chauffeur that does work 40 hours a week
13 actually earns a considerable amount of money and
14 actually earn more than the median average of employees
15 nationwide.

16 So, I am up here asking for your consideration
17 in allowing an exemption on the daily overtime. We are
18 in complete support of the 40-hour overtime, and we do
19 pay our chauffeurs over 40 hours overtime. But because
20 of the daily constraints and the shifting of the work,
21 not having enough work one day and too much the other
22 day, that puts a burden on our businesses and does -- and
23 will, if we do comply with the 8-hour day, put a burden
24 on the chauffeurs and definitely lower their wages. So,

1 I'm sure that they would be more -- would like to keep
2 things the way they are, so to speak, and earn, you know,
3 a good, comfortable living.

4 So, thank you for your time.

5 COMMISSIONER CENTER: Any questions?

6 (No response)

7 COMMISSIONER CENTER: Thank you.

8 MR. SHANEDLING: Mr. Chair, members of the
9 committee, my name is Alan Shanedling. I'm president of
10 Fleetwood Limousine in Los Angeles.

11 First off, I have a question, in that many of --
12 people in our industry, including my own company, operate
13 24-hour operations. From eleven o'clock at night until
14 seven o'clock in the morning, we have somebody in the
15 office by themselves. And I question how we handle the
16 meal situation, since, to be honest with you, at three
17 o'clock in the morning, we'd probably have to wake them
18 up to get them a meal. So, I don't know how that comes
19 into play or how we deal with that.

20 Second of all, I've been asked by numerous other
21 operators as to how to deal with this overtime situation
22 with AB 60. And I tell them they have three choices:
23 they can pay it in accordance with AB 60, they can hire
24 additional chauffeurs to cut down on their overtime, or

1 they can adjust the pay that the chauffeur makes. When I
2 say "adjust," as Rolf said, we pay the chauffeurs by the
3 job. Over 80 percent of their work is transfers, either
4 airport transfers or point-to-point transfers, for which
5 they are given a minimum number of hours, two or three
6 hours. Usually, in 90 percent of the cases, it does not
7 take that minimum amount of time to complete the job.
8 That "non-driving time," quote-unquote, is not applicable
9 to overtime. Those chauffeurs today are getting that
10 time as overtime on the 40-hour basis. If we have to
11 start breaking down the 8-hour day and seeing whether or
12 not they qualify for overtime over 8 hours in a day or 12
13 hours in a day for double time, we're also going to start
14 looking at whether or not they qualify -- whether there's
15 an overlap in jobs, such as, if we give them two hours
16 going to the airport and two hours -- or two and a half
17 hours coming out of the airport in Los Angeles, what if
18 they have a pickup in Beverly Hills going to the airport?
19 It takes an hour. They've got a pickup at the airport
20 within 20 minutes thereafter going to Santa Monica. They
21 do the whole thing in two and a half hours, and I've paid
22 them for four and a half hours. Two hours isn't
23 applicable to overtime. Right now, they're getting that.

24 We can look at the 24-hour clock and bring a

1 sixth day into play with the chauffeurs, because many of
2 our jobs do go past midnight. It's not unusual for a
3 job, let's say, on an as directed, out for an evening,
4 starting at seven or eight o'clock at night, to go till
5 one, two o'clock in the morning. We can pick up a sixth
6 day that way.

7 Travel time we can start looking at. Drivers
8 take the cars -- generally take the cars home. If they
9 have a pickup close by their home, even though we pay
10 them the travel time right now, they're not -- it's not
11 applicable to overtime because they didn't actually earn
12 it.

13 What this is doing, this bill is doing, is
14 turning a relationship that is fairly cordial right now,
15 between the employer and employee, into a conflict. And
16 it's turning it into a battleground.

17 Two examples. In 1989-1990, I was audited
18 because of the fact that the industry lost its exemption
19 at that point in time, mistakenly, when truck drivers
20 became -- fell under the overtime rules. I had an
21 auditor come in, and we calculated together. And seeing
22 what I had to go through, an auditor told me, he says, "I
23 can't tell you officially," he said, "Pay them over 40
24 hours in a week; the hell with the 8 hours per day. Your

1 chauffeurs are better off being paid under the federal
2 standard."

3 Just now, the first part of January, I've had to
4 calculate, based on AB 60. I had a driver, my senior
5 driver, under the 40-hour week, he would have been
6 entitled to 7 hours of overtime. Under a calculation of
7 AB 60, without any adjustments, he would have been
8 entitled to 9 hours. After I looked at the duplication,
9 he received overtime for 4¾ hours. I've got a very
10 unhappy senior chauffeur right now. But I cannot afford
11 to pay double time. I cannot afford to pay time and a
12 half greater than what I'm paying over the 40 hours per
13 week right now.

14 And I ask for your help, and our industry asks
15 for your help with an exemption for the limousine
16 industry.

17 COMMISSIONER CENTER: Any questions?

18 (No response)

19 COMMISSIONER CENTER: Thank you.

20 MR. SHANEDLING: Thank you.

21 COMMISSIONER CENTER: Anybody else want to
22 testify that did not sign a card?

23 (No response)

24 COMMISSIONER CENTER: Okay. This concludes the

1 testimony part of the hearing. Now we need to make some
2 action on our proposed interim draft order.

3 Mr. Broad?

4 COMMISSIONER BROAD: Mr. Chairman, I'd like to
5 move to adopt the draft interim wage order, with the
6 following modifications:

7 On Page 2, Section 3(B), in the middle of that
8 paragraph, where it says, "provided, however, that
9 pharmacists and registered nurses shall not be considered
10 exempt professionals," I would move that it be amended to
11 say, "provided, however, that pharmacists employed to
12 engage in the practice of pharmacy and registered nurses
13 employed to engage in the practice of nursing shall not
14 be considered exempt professional employees."

15 On Page 3, Paragraph -- well, you guys -- you
16 want me to --

17 COMMISSIONER CENTER: Yeah, slow down.

18 COMMISSIONER BROAD: Yeah, okay.

19 (Pause)

20 COMMISSIONER BROAD: Right. And let me make it
21 clear, I'm adding to the amended -- that includes
22 amendments already in it, that was in our packets today.
23 This is somewhat different from what -- this is somewhat
24 different from what the public -- the one that says

1 "Draft Interim Wage Order" that already has some changes
2 noted in it.

3 Yes, that one.

4 COMMISSIONER DOMBROWSKI: All right.

5 COMMISSIONER BROAD: So, I'm amending amendments
6 that are already suggested by staff.

7 Okay.

8 On Page 3, Paragraph 4(A), where it says, "and
9 for the first eight (8) hours worked on the seventh (7th)
10 consecutive day of work," add "in a workweek."

11 Where's Ms. Broyles? She'll be floored.

12 Anyway -- and Paragraph (B) of that section --

13 COMMISSIONER DOMBROWSKI: The record will
14 reflect that.

15 COMMISSIONER BROAD: Yeah. The record will
16 reflect that she can't be floored because she's not here,
17 at the moment of victory.

18 Anyway -- and on 4(B), where, in the last line
19 of that sentence, where it says "the seventh (7th)
20 consecutive day of work," "in a workweek."

21 And then, on Page 5, Paragraph (J), in the
22 middle of that sentence, it says -- let's see -- one,
23 two, three, four, five -- five lines down, where it says,
24 "employees in a work unit agreed to this flexible work

1 arrangement, in a secret," strike "flexible work," and
2 add "alternative workweek arrangement."

3 COMMISSIONER DOMBROWSKI: "Workweek."

4 COMMISSIONER BROAD: Yes. It would conform it
5 to the way we've described these things generally.

6 That would be the total of my suggested
7 amendments to the amendments.

8 COMMISSIONER CENTER: Is there a second to the
9 motion?

10 COMMISSIONER DOMBROWSKI: Second it.

11 COMMISSIONER CENTER: All in favor, say "aye."

12 (Chorus of "ayes")

13 COMMISSIONER CENTER: Any opposed?

14 (No response)

15 COMMISSIONER CENTER: Motion carries.

16 Any other proposed motions?

17 COMMISSIONER BROAD: Mr. Chairman, I'd like to
18 move that the Commission, based on the criteria set forth
19 in Labor Code Section 1178, convene a wage board to
20 establish a wage order for on-site construction, mining,
21 drilling, and logging. And then -- I don't know if this
22 is part of the motion, but I'd like to at least direct
23 the staff that this be done as expeditiously as possible
24 and that we take applications for membership of the wage

1 board as soon as possible and begin immediately drafting
2 the charge to the wage board. And there's two things
3 that I -- in specific, that I would like to add to this
4 that should be included in the charge: one, to consider
5 the issue of alternative workweek elections as they
6 relate to peak employment in seasonal industries; and,
7 two, that the charge to the wage board make it clear that
8 the definition of the industries is to be those portions
9 of the industry that are not already covered by another
10 wage order. In other words, for example, oil
11 manufacturing or refining is in the manufacturing wage
12 order, and I don't think it is our intent to start moving
13 people out, but only to deal with the on-site portion of
14 the industry.

15 MS. STRICKLIN: Would you be concerned about
16 whether it be one wage order that ultimately results from
17 this or four?

18 COMMISSIONER BROAD: My assumption is that it
19 would be one wage order that would result, because
20 wouldn't we have to have four wage boards if we were to
21 consider four separate --

22 MS. STRICKLIN: Yes.

23 COMMISSIONER CENTER: Then we need to clarify
24 that motion. It would be four individual wage boards?

1 COMMISSIONER BOARD: No.

2 COMMISSIONER CENTER: Start with one and see
3 where it --

4 COMMISSIONER BROAD: Start with one. If the
5 Commission concludes that one of those occupations or
6 industries should be in another place, it can --

7 COMMISSIONER CENTER: Okay.

8 COMMISSIONER BROAD: -- take appropriate action.

9 COMMISSIONER CENTER: Is there a second to that
10 motion?

11 COMMISSIONER DOMBROWSKI: I would second.

12 COMMISSIONER CENTER: All in favor?

13 (Chorus of "ayes")

14 COMMISSIONER CENTER: Any opposed?

15 (No response)

16 COMMISSIONER CENTER: The motion carries.

17 Any further motions? I think we need to move --

18 COMMISSIONER BOSCO: Could I just ask a
19 question?

20 COMMISSIONER CENTER: -- on the interim -- draft
21 interim wage order.

22 Yes, Mr. Bosco.

23 COMMISSIONER BOSCO: I know that we have passed
24 the draft amended wage order, but did we address the

1 question of when it would go into effect? I was somewhat
2 sympathetic to some of the testimony, and it seems to me
3 that -- okay --

4 COMMISSIONER CENTER: Maybe I can go back. What
5 we did was draft an -- we adopted the amendments to the
6 order. We have not adopted the order yet.

7 COMMISSIONER BOSCO: Oh, okay. Then is it
8 appropriate to ask what, if any, disadvantage would there
9 be to, say, holding off till the first of March, giving
10 people a month? Would that prejudice anyone?

11 COMMISSIONER CENTER: That's available for a
12 motion, if you would want to pursue that. And I don't --
13 would that help implementation? It's up to the --

14 COMMISSIONER BOSCO: I move that we -- that
15 these interim wage -- that the interim wage order go into
16 effect on March 1st, 2000.

17 COMMISSIONER CENTER: Is there any question to
18 that motion, or second?

19 COMMISSIONER BOSCO: Any comment?

20 COMMISSIONER DOMBROWSKI: I'll give you a
21 second.

22 COMMISSIONER CENTER: All in favor?

23 (Chorus of "ayes")

24 COMMISSIONER CENTER: Any opposed?

1 (No response)

2 COMMISSIONER CENTER: The motion carries.

3 Now I think we need a motion to draft the
4 interim wage order.

5 COMMISSIONER BROAD: I would move to adopt the
6 wage order, the draft interim wage order as amended.

7 COMMISSIONER CENTER: Is there a second?

8 COMMISSIONER COLEMAN: Second.

9 COMMISSIONER CENTER: All in favor?

10 (Chorus of "ayes")

11 COMMISSIONER CENTER: Any opposed?

12 (No response)

13 COMMISSIONER CENTER: The motion carries.

14 I think this concludes our business. Do we have
15 a motion -- oh -- we have a statement to the basis and
16 the summary. Do I have a motion to approve the draft
17 statement of basis and summary?

18 COMMISSIONER BROAD: Can I just have one quick
19 question, Mr. Chair?

20 COMMISSIONER CENTER: Yes.

21 COMMISSIONER BROAD: If there are minor
22 technical corrections like spelling errors or grammatical
23 errors or something of that, is the staff permitted,
24 after we approve it now, to make those changes if they're

1 not substantive?

2 MR. BARON: Yes.

3 COMMISSIONER BROAD: Okay. Thank you.

4 COMMISSIONER CENTER: Is there a motion?

5 COMMISSIONER COLEMAN: So moved.

6 COMMISSIONER BROAD: Second.

7 COMMISSIONER CENTER: All in favor?

8 (Chorus of "ayes")

9 COMMISSIONER CENTER: Any opposed?

10 (No response)

11 COMMISSIONER CENTER: Motion carries.

12 Do we have a motion to adjourn?

13 COMMISSIONER BROAD: I move to adjourn.

14 COMMISSIONER CENTER: Second?

15 COMMISSIONER DOMBROWSKI: Second.

16 COMMISSIONER CENTER: All in favor?

17 (Chorus of "ayes")

18 COMMISSIONER CENTER: Motion carries.

19 Thank you.

20 (Thereupon, at 3:42 p.m., the public
21 meeting was adjourned.)

22 --o0o--

23

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATE OF REPORTER/TRANSCRIBER

--o0o--

I, Cynthia M. Judy, a duly designated reporter
and transcriber, do hereby declare and certify under
penalty of perjury under the laws of the State of
California that I transcribed the five tapes recorded at
the Public Meeting of the Industrial Welfare Commission,
held on January 28, 2000, in Sacramento, California, and
that the foregoing pages constitute a true, accurate, and
complete transcription of the aforementioned tapes, to
the best of my abilities.

Dated: February 13, 2000

CYNTHIA M. JUDY

Reporter/Transcriber

1
2
3
4
5
6